

NAVAL POSTGRADUATE SCHOOL
INVESTIGATION REPORT
NIGHTS #201300088
12 December 2013

1. Investigator and Identifying Information and Location of Working Papers.

a. Investigator and Identifying Information. (b)(6), (b)(7)c

(b)(6), (b)(7)c

b. Location of working papers. Naval Postgraduate School
Inspector General Office, 281 Stone Road, Quarters C, Monterey, CA
93943.

2. Background and Summary.

a. Hotline Control Number, Date of Receipt and Tasking Dates.

(1) On 7 January 2013, (b)(6), (b)(7)c made a complaint to the NPS IG office alleging improprieties by employees in the Center for Homeland Defense and Security (CHDS). We completed a preliminary analysis on 16 January, and consulted the NPS Office of Counsel on 22 January and opened a preliminary inquiry. Our investigation was opened in NIGHTS on 8 February.

(2) The case information was entered into the Naval Inspector General Hotline Information System (NIGHTS) as number 201300088. A search of NPS NIGHTS records found no previous B6, B7C allegations against the subjects. This case is linked to 201202947.

(3) Three other complainants alleged the same or similar improprieties in CHDS made by (b)(6), (b)(7)c [NIGHTS 201300967, 201300968, and 201301001]. The complainants, all contractors, provided corroborating testimony and document evidence to support the existence of improprieties in CHDS. Of note, one complainant was (b)(6), (b)(7)c spouse. All three complainants are in business together with the company involving a conflict of interest allegation in CHDS [NIGHTS case 201202947]. We compared complainant testimony and documentary evidence with independent sources to support evidence creditably.

b. Summary of Complaint.

(1) Multiple complainants alleged improper contractor relationships between government employees and contractors in CHDS, resulting in contractors performing personal services and inherently governmental functions.

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(2) The initial complainant, (b)(6), (b)(7)c alleged (b)(6), (b)(7)c was making employment decisions (hiring and firing contractor employees) for CHDS contractors. He also alleged (b)(7)c, (b)(6) (b)(6), (b)(7)c were controlling, directing and supervising (micro-managing) contractor employees. He alleged (b)(6), (b)(7)c a contractor employee, was controlling and directing the work of a federal employee named (b)(7)c, (b)(6). He alleged CHDS was not following the academic council manual on thesis advising, and that there was no oversight of professional credentials for contractor faculty, course execution, or quality of CHDS theses. He also alleged (b)(6), (b)(7)c was changing CHDS curricula without academic approval. (b)(6), (b)(7)c disclosed that he may have a conflict of interest due to his spouse, Ms. Kristin Darken, serving as a contractor supporting CHDS [NIGHTS case 201202947].

(3) (b)(5), (b)(7)c employee and co-owner of Agile Research and Technology, (b)(7)c, (b)(6) (b)(7)c, (b)(6) and employee of Agile, and (b)(7)c, (b)(6) Military Personnel Service Corp. (MPSC) contract employee and co-owner of Agile, alleged similar and/or the same matters of CHDS contractors were performing personal services and inherently governmental functions. They provided additional evidence and testimony alleging the level of control, direction, and tasking over them and other contractors.

(4) Evidence provided by the complainants identified (b)(7)c, (b)(6) (b)(6), (b)(7)c and the (b)(6), (b)(7)c as a subject of the investigation.

(5) The academic matters presented by (b)(6), (b)(7)c involving thesis advising, quality assurance of instruction, how grades are assigned, and a contractor performing the academic associate duties were addressed by (b)(7)c, (b)(6) for consideration.

(6) (b)(6), (b)(7)c term as the (b)(6), (b)(7)c ended on 30 June 2013. He had a conflict of interest matter that could not be mitigated by SIGS and CHDS management.

c. Summary of the Outcome of Investigation. We investigated four allegations, and identified two other matters for management action.

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(1) Allegation 1.

(a) The allegation that (b)(7)c, (b)(6) improperly administered contracts in CHDS from September 2009 to May 2013, in violation of Federal Acquisition Regulation (FAR) 7.5 and 37.1, was **substantiated**.

(b) We determined that:

(1) (b)(6), (b)(7)c effectively utilized and treated CHDS contractors as government employees by the way he exercised his authority in CHDS and over CHDS contractors. He established a management climate where he controlled and set the conditions that allowed contract employees to function like government employees. He controlled, directed, and supervised contractors, placed contractors in positions to reorganize activities and duplicate NPS functions, and allowed a contractor to provide direction and oversight of a federal employee.

(2) (b)(6), (b)(7)c orchestrated his own recruiting method and essentially did the work for the contractor in hiring personnel. He interviewed and offered employment to potential contracted employees. He developed a concept to utilize contracted interns, interviewed them, and facilitated their hiring. (b)(6), (b)(7)c administered what amounted to disciplinary/corrective action to a contractor.

(3) It appeared CHDS contractor companies accepted (b)(6), (b)(7)c control over contract employees to maintain cooperative relationship and favorable support for potential future funding. This was evident by the level of CHDS involvement of internal company matters (awarding COLA and salary increases) based on CHDS direction and (b)(6), (b)(7)c approval. There was the appearance that (b)(6), (b)(7)c had direct access to contractors, and was providing technical advice when he was not authorized to do so. The acquiescence by (b)(6), (b)(7)c CHDS COR and contracting expert, of (b)(6), (b)(7)c actions allowed (b)(6), (b)(7)c to abuse his position of authority in exerting control over contractors.

(2) Allegation 2.

(a) The allegation that (b)(6), (b)(7)c improperly administered contracts in CHDS from September 2009 to May 2013, in violation of Federal Acquisition Regulation (FAR) 7.5 and 37.1, was B6, B7C

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(b) We determined that:

(1) (b)(6), (b)(7)c was in a position of trust and responsibility as the appointed (b)(6), (b)(7)c for providing guidance and direction to the CHDS leadership on contracting matters. CHDS relied on (b)(6), (b)(7)c extensive contracting expertise to ensure they maintained the right relationship with contractors. (b)(6), (b)(7)c permitted and supported the CHDS management environment and decisions that led to contractors forming an employee-employer relationship to provide personal services and perform inherently governmental functions.

(2) (b)(6), (b)(7)c was reasonably aware (b)(6), (b)(7)c treated contractors as government employees and administered the contract in a manner that allowed (b)(6), (b)(7)c to control, direct, and supervise contractors. (b)(6), (b)(7)c relied on (b)(6), (b)(7)c contracting experience to keep him out of trouble. As the (b)(6) and a contracting expert, (b)(6), (b)(7)c was reasonable aware that (b)(6), (b)(7)c actions to direct work to a sub-contractor were improper. B6, B7C

(3) (b)(6), (b)(7)c was personally involved in the process of directing a CHDS prime contractor (MAC Consulting) to hire a sub-contractor (KnowVit-Agile) to conduct NPS research. B6, B7C supported B6, B7C actions in directing contractor companies to provide COLA increases to employees, recommending salary increases, and in hiring contract faculty. B6, B7C allowed CHDS to overstep its limitations with contractors.

(4) B6, B7C treated B6, B7C a contractor, like a government employee (personal services) and had him perform an inherently governmental function (drafting an agency response to audit reports from the IG). He had B6, B7C draft input for the CHDS response to the 2012 NPS IG inspection report for a proposed legislation change. He also directed his subordinate, B6, B7C to support (b)(6), (b)(7)c a contractor.

(3) Allegation 3.

(a) The allegation that B6, B7C improperly administered contracts in CHDS from February 2011 to May 2013, in violation of Federal Acquisition Regulation (FAR) 37.1, was B6, B7C

(b) We determined that after converting to government employment, B6, B7C continued to direct and task contractor

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employees, and regularly communicated with contract management on technical matters and employee decisions. Her actions allowed contractors to perform personal services in the way she administered and managed oversight of contractors. [REDACTED] was not a [REDACTED] COR or TPOC that would have allowed her to administer contracts in CHDS. Even if she was designated a COR or TPOC, her actions with contractors were improper. Contract employees did not perform their duties independent of her oversight, and she effectively continued to function as a contractor management representative including mentoring her contract replacement and interviewing contract employees. We determined there were three mitigating factors to this allegation. One was [REDACTED] lack of contracting training, the second was direction provided by [REDACTED] and [REDACTED] to communicate with the contractor, and the third was the CHDS contractor-government management climate (employer-employee relationship) that was allowed to occur by CHDS management.

(4) Allegation 4.

(a) The allegation that [REDACTED] improperly administered contracts in CHDS from September 2009 to May 2013, in violation of Federal Acquisition Regulation (FAR) 37.1, was [REDACTED]

(b) We determined that as the [REDACTED] [REDACTED] permitted and supported the CHDS management environment that allowed the employee-employer relationship over contractors to flourish. He maintained a similar level of control and authority over contractors that [REDACTED] maintained. He was knowledgeable of most of [REDACTED] [REDACTED] actions involving contractors. [REDACTED] was fully aware, knowledgeable, participated, and weighed-in on directing work or the discussion of potential work for Agile, a CHDS sub-contractor. [REDACTED] Woodbury was a passive observer to [REDACTED] and [REDACTED] actions even though his title was [REDACTED] [REDACTED] was not a designated COR or TPOC that would have allowed him to administer contracts in CHDS. Even if he was designated a COR or TPOC, his actions with contractors were improper. Mitigating factors included [REDACTED] lack of contracting training and his reliance on Mr. Harrigan's contracting expertise. [REDACTED] acknowledged that communications with contractors went too far, but he did not act to correct this.

(5) Other Matters for Management Action (refer to FLCSD Contracting Directorate).

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(a) CHDS Special Projects. There was an appearance (b)(6) (b)(6), (b)(7)c solely determined whether the contract statement of work would support NPS work added on as a special project to the CHDS contract. B6, B7C was in a position to apply incremental funding for each project and to approve contractor invoices for these projects. A review of statements of work for special projects supporting the NSA Center for Contemporary Conflict (CCC) appeared to be outside the scope of the CHDS statement of work. We could not determine if the contracting officer reviewed or approved these projects. B6, B7C was in a unique position to request the work from the contractor and approve the contractor invoice for the service, or he had oversight of this approval process. We recommended this matter be referred to FLCSD Contracting Directorate (code 200) for consideration.

(b) Purchase of Laptop Computers for CHDS Students. CHDS Master of Arts (MA) students are given laptop computers by the contractor, and have the option to purchase the computers for \$200 at the end of their studies. (b)(6), (b)(7)c stated that computers are supplied to students, but CHDS doesn't pay a direct cost for them because the cost is built into the labor rates (overhead function) of the contract company. Property purchased by the contractor for the government is government property. It's not clear that the laptops are government property if NPS did not pay the cost as a direct contract cost. If the contractor included the cost of laptops (destined for sale to CHDS students) in its labor rate, it appears the burdened rate is inflated. It appeared B6, B7C may have provided inappropriate guidance to the contractor for disposing of government property. We recommended this matter be referred to FLCSD Contracting Directorate (code 200) for consideration.

3. Allegation 1. B6, B7C improperly administered contracts in CHDS from September 2009 to May 2013, in violation of Federal Acquisition Regulation (FAR) 7.5 and 37.1.

a. Facts.

(1) Standards.

(a) FAR, subpart 7.5, Inherently Governmental Functions, section 7.503, Policy (c) states in part, "The following is a list of examples of functions considered to be inherently governmental functions or which shall be treated as such. This list is not all inclusive... (5) The determination of agency policy, such as

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determining the content and application of regulations, among other things...(7) The direction and control of Federal employees."

(b) FAR, section 7.503(d), lists examples of "functions generally not considered to be inherently governmental functions. However, certain services and actions that are not considered to be inherently governmental functions may approach being in that category because of the nature of the function, the manner in which the contractor performs the contract, or the manner in which the Government administers contractor performance. This list is not all inclusive: (1) Services that involve or relate to budget preparation, including workload modeling, fact finding, efficiency studies, and should-cost analyses, etc. (2) Services that involve or relate to reorganization and planning activities...(13) Contractors participating in any situation where it might be assumed that they are agency employees or representatives...(18) Contractors providing legal advice and interpretations of regulations and statutes to Government officials."

(c) FAR, subpart 37.1, Personal Services Contracts, section 37.104, states in part, "(a) A personal services contract is characterized by the employer-employee relationship...(c)(1) An employer-employee relationship under a service contract occurs when, as a result of (i) the contract's terms or (ii) the manner of its administration during performance, contractor personnel are subject to the relatively continuous supervision and control of a Government officer or employee.

(d) FAR, subpart 37.204(d) states, in part, "The following descriptive elements should be used as a guide in assessing whether or not a proposed contract is personal in nature: (1) Performance on site. (2) Principal tools and equipment furnished by the Government. (3) Services are applied directly to the integral effort of agencies or an organizational subpart in furtherance of assigned function or mission. (4) Comparable services, meeting comparable needs, are performed in the same or similar agencies using civil service personnel. (5) The need for the type of service provided can reasonably be expected to last beyond one year. (6) The inherent nature of the service, or the manner in which it is provided reasonably requires directly or indirectly, Government direction or supervision of contractor employees in order to (i) Adequately protect the Government's interest; (ii) Retain control of the function

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involved; or (iii) Retain full personal responsibility for the function supported in a duly authorized Federal officer or employee."

(2) CHDS contracts.

(a) CHDS contracts contain a non-personal service statements that read "Contractor employees performing services under this order will be controlled, directed, and supervised at all times by management personnel of the contractor...Contractor employees will perform their duties independent of, and without the supervision of, any Government official...The tasks, duties, and responsibilities set forth in the task order may not be interpreted or implemented in any manner that results in any contractor employee creating or modifying Federal policy, obligating the appropriated funds of the United States Government, overseeing the work of Federal employees, providing direct personal services to any Federal employee, or otherwise violating the prohibitions set forth in Parts 7.5 and 37.1 of the Federal Acquisition Regulation (FAR)."

(b) Contracts N00178-06-D-4798-NW01 to NW03. These contract task orders (NW01 to NW03) primarily provided instructional support services to CHDS in the form of faculty and administrative labor since 2007. The prime contractor was MAC Consulting. (b)(6) (b)(6), (b)(7)c was listed as the (b)(6) for the majority of these contracts.

(c) Contracts N00244-06-C-0060, N00244-07-D-0021, N00104-10-MQV91, N00104-11-M-QV94, N00104-11-M-QV95, N00104-11-M-Q570, N00104-12-C-Q525. These contracts primarily provided technology support services to CHDS since 2006. The prime contractor was VRC, Inc., which sub-contracted work to Military Personnel Services Corporation (MPSC). B6, B7C was listed as the (b)(6) for the majority of these contracts.

(d) According to his testimony, B6, B7C considered himself the (b)(6), (b)(7)c for technology matters, and the PI for funding. B6, B7C considered himself a (b)(6), (b)(7)c. The approval of expenditures for these contracts was divided among (b)(6), B6, B7C, B6, B7C and B6, B7C.

Controlling, Directing, and Tasking of Contractors

(3) **CHDS IT Strategy and Labor Plan.** The IT Strategy outlined changes in direction for CHDS to change technology to address a drop in productivity. The IT Strategy was accompanied by an IT Labor Plan that stated, "Implementation of the IT Strategy may require some

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adjustments in the labor plan of our information team. The fundamental driver is to align people with mission."

(a) The IT Strategy and Labor Plan were (b)(6), (b)(7)c
(b)(6),
(b)(7)c

(b) The IT Labor Plan included salary increase recommendations for contractors. The labor plan recommendations stated that (b)(6), (b)(7)c should receive increases of \$10,000/yr each" and B6, B7C salary "should be increased by \$10,000/yr." The recommendations also outlined that "the information team has routinely under-burned its budget for interns (summer 2012 intern project excepted). It may be possible to find the funds to increase key salaries from that budget item."

(c) (b)(6), (b)(7)c contract employee, testified that she received a salary increase of (b)(6), (b)(7)c per year that was effective 1 August 2012. This salary increase was verbally B6, B7C to her by B6, B7C MPSC, as being in recognition of the good work she did and was doing. She believed it had nothing to do with the CHDS IT Strategy or labor plan.

(d) B6, B7C MPSC contract employee with MPSC, testified that he received a (b)(6), (b)(7)c salary increase last year around October or November. He thought the salary increase was because he asked for one.

(e) B6, B7C MPSC contract employee, testified that B6, B7C came up with the IT strategy, passed it to CHDS employees, then through a meeting with B6, B7C [MPSC] he got the information. He did not recall getting a salary increase based on work for the IT strategy.

(f) On 12 July, B6, B7C asked B6, B7C to run the IT labor documents by the contractors. The labor plan that included the recommendations was sent to B6, B7C VRC, by B6, B7C on 25 July. On 26 July, B6, B7C told B6, B7C that (b)(6) is good with whatever you want to do." B6, B7C was copied on the emails.

(g) B6, B7C testified that she saw she saw a copy of the labor plan that B6, B7C sent to her (b)(6), (b)(7)c and the plan mentioned raises for B6, B7C and B6, B7C The labor plan the contracting company sent to employees had the paragraphs with the raises removed.

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(h) B6, B7C testified that the IT strategy and labor plan was authored by B6, B7C on how to reorganize the IT department and included contractor salary increases of \$10,000 per year.

(i) B6, B7C stated the pay raise recommendation was in the document because the company wanted to know "if we would approve this sort of thing...if B6, B7C would concur with it." The labor plan that B6, B7C delivered to the contracting staff did not have the salary recommendations included.

(j) B6, B7C testified that she is responsible for all the (b)(6), (b)(7)c work at the center. She sets the (b)(6), (b)(7)c and makes sure CHDS is receiving technical products requested under the contract. B6, B7C wrote the IT Strategy and she edited it. (b)(6) B6, B7C asked her to fill in names. She believed the labor plan was put forward as a suggestion, and the salary increase was a suggestion to meet the objectives of the strategy. She was "not surprised the contractors received the recommended pay raises because if someone's responsibilities increase, then a raise goes along with that." Email showed B6, B7C had a conversation with B6, B7C about a meeting of the contract staff to determine how they were going to meet the terms of the strategy. She stated that the labor plan B6, B7C sent to contractors did not have the recommendations included.

(k) At our request, (b)(6), (b)(7)c Business and Acquisition Support, NAVSUP Fleet Logistics Center San Diego, performed a subject matter expert (SME) review of the IT Strategy and Labor matter. He stated the IT Strategy requirements and motivation were reasonable, but the development of a labor plan to implement the IT Strategy was a problem: "The government crossed the line in providing decisions regarding the interoperability of the contractor's company when they suggested raises and labor mix to accomplish the IT Strategy." He also stated that the COR can get reviews and assistance from other government personnel, but it's the COR who should be communicating with contractors. B6, B7C believed B6, B7C B6, B7C and B6, B7C had direct access to contractors, and were providing technical advice when they were not authorized to do so.

(l) B6, B7C testified that the purpose of asking (b)(6) (b)(6), (b)(7)c to share the IT strategy and labor plan with contractors was because there was "a lot of fighting going on in the IT group" and they needed structure. "I proposed to B6, B7C that he communicate that

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to the contract staff. If people know what their lanes are, maybe they won't get in each other's way and maybe we can stop all this fighting and get back to work. I don't think it worked, but it was an attempt." B6, B7C didn't think he authored the whole IT labor plan, part of it was his suggestion, and he believed "it's been enhanced." He speculated that the recommendations were added from the contractor in response to involvement of B6, B7C

(4) **Cost of Living Adjustment (COLA).** In November 2012, there was a discussion with CHDS leadership and the contract companies to decide on whether or not COLA should be paid to contract employees. B6, B7C VRC, stated in a 16 November email to CHDS (B6, B7C B6, B7C and B6, B7C and cc'd to MAC Consulting, "As directed in the Mid-Year Budget review, we have developed estimated costs for COLAs under varying conditions and % levels." B6, B7C stated "We believe that the 2% level for staff and no 1099s¹, can be supported within the Budget, given the recent review." On 26 November, B6, B7C and B6, B7C approved the recommendations that full-time contract staff would get a 2 percent increase, but 1099 employees would not get COLA. COLA was paid to contract employees in March 2013.

(a) B6, B7C testified that the contractor can pocket extra money or make suggestions, and asked the government about the COLA increase as more of a courtesy. He said that priorities are reviewed at staff meetings, and contractors are not given direction.

(b) B6, B7C stated he believed the contractors were asking for CHDS's opinion on COLA. He didn't recall everything about the COLA discussion, but believed the contractors provided too much detail. "I think at some point it got to the level of detail that it shouldn't have gotten to...somebody should have said, 'Oh, stop.'"

(c) B6, B7C testified that he did not recall the COLA discussion. He stated that any decision on COLA or merit bonuses would be a contractor call. The contractor might "ask B6, B7C and I whether we object to it, but it's their call." When asked the purpose of a contractor asking him whether or not contractors would get COLA, Prof B6, B7C stated "because B6, B7C and I are worried about spending taxpayers' money."

¹ Independent contractors are referred to 1099 employees for the IRS code classifying the income. A 1099 employee can be considered a sub-contractor for a contractor.

(d) B6, B7C performed a subject matter expert (SME) review of the CHDS COLA matter. He stated that "there is a difference between monitoring the contractor's efforts and directly participating in decisions as to whether or not to provide COLA or other pay increases to contractor employees. Participating in a contractor's pay decisions is outside of realm of a government employee's responsibilities...The government overstepped their limitations."

Controlling Contractor Hiring.

(5) **Hiring of** B6, B7C **Interns.** In May 2012, B6, B7C arranged with B6, B7C NPS Faculty, to interview local students as summer interns. B6, B7C actively participated in the interviews of these interns along with B6, B7C B6, B7C (contractor), and B6, B7C (contractor). B6, B7C also actively engaged with B6, B7C to set the hours for the interns.

(a) B6, B7C MPSC contract employee, testified that he believed he worked for B6, B7C on some of his projects.

(b) B6, B7C VRC contract employee, testified that B6, B7C (b)(7)c, (b)(6) B6, B7C and B6, B7C B6, B7C his interview.

(c) B6, B7C MPSC contract employee, testified that he interviewed the interns with B6, B7C and B6, B7C

(d) B6, B7C testified that B6, B7C sat in on the interviews with interns and asked B6, B7C questions. He stated "We needed B6, B7C to be able to give us a better idea of what we were looking for to complete the project. So, he was able to say, 'That individual has a good skill set; that individual, probably not.'" B6, B7C deferred to B6, B7C on the requirement because it was code-based and outside his knowledge of what the interns specifically needed. B6, B7C stated he asked B6, B7C if "these were the type of candidates that we were looking for" and B6, B7C "simply offered advice." B6, B7C stated the intern requirement came from the web team [B6, B7C

(e) B6, B7C stated "there's a funding mechanism to hire interns under VRC. Part of the SOW is to bring in seasonal employees. It's a FFP (Firm-Fixed Price) contract and as long as they're doing the work that we want them to do, he has no control over who they hire and fire." B6, B7C stated that he had no idea about who made the decisions to hire interns.

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(f) B6, B7C testified that B6, B7C "proposed to the contractors that we hire these summer interns... B6, B7C and I did get involved with (b)(6), (b)(7)c used his university contacts in the region to reach out to folks... And the three of us did interview the candidates... (b)(6), (b)(7)c [VRC] was completely aware of all this, was totally on board with the project." B6, B7C stated B6, B7C wanted to try an experiment of "whether we needed this high-end, expensive game development or could you take relatively inexperienced, basic programmers, give them a task, give them some training in the simpler, newer emerging technologies and see as kind of proof of concept as to whether sort of average programmers could produce the kind of products that we were looking for that are outlined in that IT strategy."

(g) B6, B7C testified hiring the interns was related to the loss in productivity because VRC was not able to hire people. Turnover was one of the problems with productivity. B6, B7C stated "the requirement was already there because we have a contractual requirement to deliver so much per unit of time, right? And it wasn't being done. So I suggested this as a way to remedy the problem." B6, B7C B6, B7C he "suggested to (b)(6), (b)(7)c that why don't we grow our own, so to speak. We'd hire summer interns and when they graduate they'd come to work for us and we'd have a workforce. And she talked to the contractor and the contractor assigned B6, B7C to interview these people, and that's what they did last summer." (b)(6) B6, B7C stated that B6, B7C "was informed that that's what we wanted to do" but didn't know if he talked to the contractor. (b)(6) B6, B7C stated he "talked" to the interns, but "didn't interview them. That [interviewing] was B6, B7C stuff."

(6) Hiring of B6, B7C MAC contractor.

(a) On 15 Jun 2012, B6, B7C B6, B7C was offered a position as a MAC B6, B7C faculty by B6, B7C B6, B7C told (b)(6) (b)(7)c, how much he would be paid, that MAC Consulting would be his (b)(6) employer and they would contact him, and to contact B6, B7C for questions. B6, B7C informed B6, B7C later on 15 June that (b)(6) (b)(6), would be joining CHDS. B6, B7C testified that he was (b)(7)c contacted by MAC Consulting after talking to B6, B7C

(b) B6, B7C testified that it's standard practice in CHDS that hiring is done by the government and not by contractors. He was copied on an email from B6, B7C that showed how B6, B7C was hired by B6, B7C

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(c) B6, B7C testified that she did not know who found B6, B7C how he was recruited or how he made contact with CHDS. She recalled B6, B7C said "we've got a new person we're going to try out for CIP [Critical Infrastructure Protection], he's going to be at the probationary level and we'll [see] how it goes." In other cases that information got transmitted to (b)(6), (b)(7)c [MAC Consulting] first, in some cases simultaneously, there's no clear order." She believed that hiring B6, B7C was a case where B6, B7C found B6, B7C and then MAC Consulting was notified. B6, B7C stated they hired people a number of different ways by posting in public forums or brought in directly by other faculty especially lead instructors. She stated "contract firms have never once sort of recruited or found or supplied any of our faculty...they basically hire the people we find and feel are a good fit as an academic body."

(d) B6, B7C stated he believed B6, B7C found out from the contracting company the plans to hire B6, B7C (b)(6) (b)(7)c, (b)(6) didn't believe it was problematic that B6, B7C told (b)(6) (b)(7)c, what he would be paid because the labor categories are set. (b)(6) (b)(6), (b)(7)c believed B6, B7C email to B6, B7C was a professional courtesy more than a hiring action, and B6, B7C "didn't tell (b)(6) (b)(7)c, (b)(6) I just hired you' but the contractor is gonna to put you in the classroom." B6, B7C stated B6, B7C "probably shouldn't have sent the email."

(e) B6, B7C testified that B6, B7C contacts him if the contractor cannot find someone to fill a course. The contractor would ask him if he knew someone. He had read B6, B7C dissertation and gave them his name. B6, B7C stated he talked to B6, B7C and she agreed to put B6, B7C in the work plan. He assumed B6, B7C communicated with MAC Consulting and they agreed to do it. B6, B7C stated he was communicating with B6, B7C to see if he was okay with the contract, and to confirm the salary was what the contractor told him. B6, B7C said the salaries are "pretty cut and dry...and (b)(6), (b)(7)c manages that process. But we work pretty close together because I'm worried about quality. I want to have somebody that knows what they're doing." B6, B7C stated that B6, B7C "might have heard from me first, because there wasn't any reason for him to contact the contractor until...everybody was sure that we wanted to hire him."

(7) **Re-Hiring of** B6, B7C B6, B7C previous (b)(7)c, (b)(6)

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(UAPI) from 2006 to 2012, testified that he would be working as the part-time co-director of UAPI with B6, B7C contract employee, on 1 May 2013. B6, B7C stated that when he wanted to return to CHDS, he had a conference call with B6, B7C and was told that B6, B7C had to ok it. He was called by B6, B7C told that they ok'ed it, and then he was contacted by (b)(7)c, (b)(6) at MAC.

(8) Other contractor related hiring.

(a) B6, B7C CHDS government employee and former VRC contract employee, testified that she was interviewed by B6, B7C and B6, B7C before she was hired by VRC.

(b) B6, B7C testified and stated in an email that standard hiring practice in CDHS in 2009 was to ask B6, B7C if we could hire. "I would write the position description of exactly what I wanted. "I conducted the interview with...contractor HR representative (B6, B7C present. I then told the contractor who we wanted and what (approximately) they needed in compensation to get that person. I then managed that team daily. They considered me to be their supervisor." B6, B7C stated he was not advised or knew his actions were improper when he hand-picked staff his staff in 2009.

(c) B6, B7C stated that B6, B7C (contractor) told him "B6, B7C and B6, B7C now communicate with contracting companies through him [B6, B7C rather than directly." As an example, he said, "this was how they had been instructed to undertake the most recent instructor hire; B6, B7C tells B6, B7C who he wants then B6, B7C tells the contractor who the leadership wants to hire and the contractor does the hiring."

Control over Contractor Personnel.

(9) **Threat to fire** B6, B7C B6, B7C testified that on 10 July 2012 she was told by B6, B7C that "B6, B7C B6, B7C just walked into my office and says he wants me to fire you." She stated that (b)(6) (b)(7)c, (b)(6) told her that "he told B6, B7C he can't fire you...and I would talk to you...Just keep your head down." In a VRC memorandum for record dated 8 May 2012 subj: Official Complaints from CHDS on MPSC employee, that stated complaints were received from B6, B7C B6, B7C B6, B7C (b)(6), (b)(7)c that B6, B7C was "surly in communication with each of them, displayed unprofessional attitude, and has been difficult to work and communicate with."

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(a) B6, B7C B6, B7C that he did not tell B6, B7C that B6, B7C wanted to fire her. He stated the discussion was more of a professional problem she was having and her contract company wanted to fire her. She was making a lot of trouble for them and badmouthing them specifically. B6, B7C believed that B6, B7C thought she could get away with it because her (b)(6), (b)(7)c worked at NPS. B6, B7C B6, B7C he made it a point, personally, to tell her that she works for a contract company, and to do what your told and stop making problems. B6, B7C B6, B7C that the contractors came to "us" and B6, B7C to approve replacing her on the contract.²

(b) B6, B7C stated that there was a formal complaint made by B6, B7C to B6, B7C regarding the poor performance by B6, B7C because she took her observations and complaints about (b)(6) (b)(7)c to B6, B7C. She stated that B6, B7C B6, B7C B6, B7C and she discussed B6, B7C and made a complaint to VRC that a number of people at the center expressed the fact that they were having trouble working with her.

(c) B6, B7C stated that about two or three years ago, the contractor asked if he wanted B6, B7C fired. He told the contractor "I can't make that decision." When asked by the contractor what should they do, he told them "give her another chance."

(10) **El Torito Incident.** The complainants detailed an incident between B6, B7C and B6, B7C in February 2011 during lunch at a local restaurant. The purpose of the lunch indicated the level of oversight of contractors and the CHDS-contractor relationship by (b)(6) B6, B7C. During the lunch, B6, B7C used loud and abusive language directed at B6, B7C B6, B7C and B6, B7C witnessed the incident.

(a) B6, B7C testified that "we [B6, B7C and Ms. Darken] went out to lunch with B6, B7C [B6, B7C and (b)(7)c (b)(7)c to just, kind of, brainstorm about if my company [Agile] could, you know, do work for CHDS; could we bid on the contract the next time it came out or, you know, what did they think about it? And it was - I'd been friends with B6, B7C for years. So, it was not - and good friends with B6, B7C -- It was not an unusual thing for us to go out to lunch and talk about those things." She said they discussed self-study courses and B6, B7C didn't like her answer and got really

² B6, B7C employment was terminated by MPSC on (b)(6), (b)(7)c .

angry and said 'Why don't you just do the fuck what I tell you to do?'

(b) B6, B7C stated he was at lunch with B6, B7C and B6, B7C and there was a discussion about online educational materials. During this discussion, B6, B7C started "yelling, absolutely losing control" and yelled at B6, B7C saying "Just do what I fucking tell you." B6, B7C left crying, but came back after composing herself.

(c) B6, B7C testified that he remember being at El Toritos and B6, B7C left crying and then came back. He did not recall what was said to B6, B7C B6, B7C using profanity, or B6, B7C using abusive language. B6, B7C stated it wasn't the first time B6, B7C "walked out of meetings crying."

(d) B6, B7C testified that he regretted the incident. (b)(6), (b)(7)c stated "productivity in that group [media development] just fell off dramatically and she had a, contractually, she was obligated to deliver a, what we call a self-study course every quarter, and it had been like four quarters before, since anything had come out, and I got upset and...said something like, "Just fucking do it...it was my fault. I apologize. I shouldn't have said it, but after waiting for almost two years, you know, it didn't seem right to me." He stated "maybe I'm a hard ass, but I'm trying to get the maximum amount of performance for the government's money, because I'm a taxpayer, too. And the productivity just started falling off dramatically about two, three years ago, and I've been a thorn in people's side is because I bug them and say, 'Come on. Let's produce something.'"

(11) **Threat to fire** B6, B7C B6, B7C believed that B6, B7C wanted to fire him, but B6, B7C couldn't because he was doing a good job teaching. B6, B7C stated that "B6, B7C explained to me in detail how he will remove me from teaching without having to fire me." This is done by getting rid of the class he taught and replacing it with another class. B6, B7C stated B6, B7C told him that "What B6, B7C wanted to do was fire you. I've been arguing to keep you, because you have the best class in the program; you can't just get rid of it that way." B6, B7C believed B6, B7C wanted to fire him based on his involvement with the Faculty Executive Committee (FEC) and relationship with the (b)(6), (b)(7)c

(a) B6, B7C recalled B6, B7C told him that B6, B7C wanted to fire him, but he did not take it seriously.

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B6, B7C stated that B6, B7C and B6, B7C may not like one another, but B6, B7C was a good teacher. "If B6, B7C wanted to fire (b)(6), (b)(7)c he could have fired him" because "CHDS fires people by not renewing their contract." He also could structurally get rid of a course, and get new people in to teach it. B6, B7C stated that he asked B6, B7C if he wanted to fire B6, B7C and he said no.

(b) In an email dated 16 November 2012, subj: Are you in town, between B6, B7C and B6, B7C about B6, B7C wanting to meet with B6, B7C B6, B7C stated "My guess is that he is reevaluating his loyalties...Maybe he is starting to worry about his job."

(c) B6, B7C stated that he didn't want to fire (b)(6) Brannan. He stated that (b)(7)c, (b)(6) came to my office once and said, 'I hear you're going to fire me.' I said, 'B6, B7C I can't fire you. A, you're too good, and B, you work for somebody else.'" B6, B7C believed B6, B7C came to him because "we sometimes change the batting order of who teaches what, and I think he was worried that he was going to lose his job."

(12) **Disciplining a contractor.** B6, B7C stated he was told by B6, B7C that "It's my job to supervise you guys, and I've had 2.5 complaints that you're an asshole and a bully, and we have a no asshole policy here. Either you go apologize and try and make this right with them, or you're outta here." On 29 November 2012, (b)(6) (b)(7)c, (b)(6) sent out an email apologizing to FEC members, and apologized to employees at a senior staff meeting. Several contractors and government employees testified that B6, B7C apologized for being an asshole and bully at the senior staff meeting and in an email. Most were surprised by B6, B7C statement.

(a) B6, B7C stated he was told by B6, B7C that B6, B7C called B6, B7C into his office and called him an asshole and bully. He was told to stop or he wouldn't work at CHDS anymore. B6, B7C believed the asshole and bully comment was related to B6, B7C involvement in the CHDS Faculty Executive Council (FEC) because he was an aggressive proponent of the FEC proposal.

(b) B6, B7C stated she sent an email to B6, B7C that she thought B6, B7C was insubordinate because she was alarmed that email traffic that showed B6, B7C wanted to overhaul the

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evaluation system so that his side business could bid on it [RFI Assessment]. She called it almost more "treasonous." This email was shared by B6, B7C with B6, B7C

(c) In a 29 November 2012 email, subj: Apology and guidance moving forward, B6, B7C and B6, B7C discussed apology in order to be consistent in a reply. B6, B7C stated "It appears he apologized to 1.5 of the people he offended already...suppose it wouldn't hurt to send an apology to the FEC." B6, B7C agreed and stated B6, B7C apologized to the staff meeting.

(d) B6, B7C testified that B6, B7C angered some FEC members in his emails on FEC matters, and he shared with that people were upset. He did not know if B6, B7C directed B6, B7C to apologize, but recalled B6, B7C apologizing for being an asshole and a bully at a staff meeting. He also believed might have sent out an email apology.

(e) B6, B7C testified that "I got two complaints from faculty members, from NPS faculty members, that he was being a bully. So I didn't want to make a big deal out of it. I called him in my office. I said, 'B6, B7C you gotta calm down because someone says you're a bully.' He acted surprised. And I said, 'You know, this is none of my business, but you don't. I'm just telling you this...it's not collegial.' And he went out and started apologizing profusely to everybody. I didn't ask him to do it, but he did it." B6, B7C stated he did not report it to the contractor because "I didn't want to get him in trouble."

Supervision of Contractors

(13) B6, B7C B6, B7C admitted that he spoke directly with B6, B7C MAC contracted employee, about reducing his teaching schedule because he "did not do a very good job in the spring quarter a year ago" and was busy with a startup company. B6, B7C B6, B7C that B6, B7C wasn't fired because he did teach again in the winter and recently in July. B6, B7C CHDS B6, B7C in San Luis Obispo, testified that because of his other duties last year, he could teach two instead of three courses. B6, B7C emailed him "basically telling me that things were changing and that he wasn't going to need me to teach the class." B6, B7C stated the notification from B6, B7C came without warning. B6, B7C email stated "lets take a rest." (b)(6),

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(b)(6),
(b)(7)c stated he was scheduled to teach again in the winter. (b)(6),
(b)(7)c stated he got all his directions from CHDS.

(14) B6, B7C testified that nothing happens without (b)(6) B6, B7C approving it. He B6, B7C that he reports to B6, B7C and (b)(6) Woodbury at CHDS. He does not report to an on-site contractor or report anything to MPSC other than to sign his time sheet. He stated that "B6, B7C and B6, B7C have absolute control over you because of the personal services nature of the CHDS contracts that was facilitated because of relationship with contractors over many years."

(15) B6, B7C CHDS contracted faculty, testified that for teaching duties he reports to B6, B7C and B6, B7C. Any ongoing direction comes from CHDS leadership usually via (b)(6) (b)(7)c and more recently B6, B7C. He believed B6, B7C is doing the (b)(6), (b)(7)c work.

(16) (b)(6), (b)(7)c B7C testified that she reports to B6, B7C a government employee. In an email dialog primarily between (b)(6) (b)(6), (b)(7)c and (b)(7)c, (b)(6) NPS Faculty, on (b)(6), (b)(7)c (b)(6) B6, B7C "I had a meeting with B6, B7C B6, B7C and Jodi Stiles last Monday afternoon to update them on your interest in using Dystopia... B6, B7C told me at that time that we could give you all our data and you could run it on your own server."

(17) B6, B7C former (b)(6), (b)(7)c (b)(6), (b)(7)c until 2012 as a MAC contract employee, testified "taskings and direction essentially came from... B6, B7C B6, B7C and from B6, B7C Woodbury." He interacted with them directly. He was tasked to develop and run the UAPI program, and before he made any decisions or did events, he would coordinate with them [B6, B7C and B6, B7C first to get their approval.

(18) B6, B7C VRC contract employee performing as the (b)(7)c, (b)(6) testified that she regards herself as B6, B7C "right hand man."

Control over Directing/Approving Contractor Work

(19) (b)(7)c, (b)(6) **Project.** In 2009, B6, B7C former (b)(7)c, (b)(6) in MOVES, contracted out his research utilizing CHDS NW02 contract with MAC Consulting. The work was sub-B6, B7C to KnowVit (Agile³), a company owned and operated by (b)(6), B6, B7C (b)(7)c

³ KnowVit was renamed Agile Research and Technology in the fall of 2010.

(b)(6), (b)(7)c CHDS contract employee with MPSC, and B6, B7C CHDS contracted faculty with MAC, Consulting. [NIGHTS 201202947 investigated an alleged conflict of interest matter involving KnowVit.] B6, B7C was involved in a meeting to discuss having Ms. Darken's group [Agile] work for B6, B7C using the MAC Consulting contract.

(a) B6, B7C MAC contractor and Agile co-owner, testified there was a meeting with (b)(7)c, (b)(6) and himself where they were told MAC would be the prime, they would do the work, and answer to B6, B7C as the PI. He believed that nothing happens without B6, B7C approving it.

(b) (b)(7)c, (b)(6) former MOVES (b)(6), (b)(7)c, assisted B6, B7C with submitting his research proposal. She provided emails that showed B6, B7C and (b)(6) were closely involved in the decision process to approve Agile working on the (b)(7)c, (b)(6) project.

(c) (b)(6), (b)(7)c testified that he determined Lieberman's project research could fit under the NW02 performance work statement for instructional design and special projects. B6, B7C believed the government would benefit by using a variation of what they were doing instead of building a learning management tool from scratch. MAC Consulting stated they could do the Lieberman project work, but MAC Consulting would decide who to use. In reference to B6, B7C meetings with B6, B7C (b)(6), (b)(7)c B6, B7C and Mr. B6, B7C B6, B7C stated he didn't know why B6, B7C had a meeting with B6, B7C and B6, B7C B6, B7C stated that "while his personal recollection is that B6, B7C was not trying to direct work to Agile...he doesn't sit in a lot of those meetings."

(d) (b)(6), (b)(7)c testified that he recalled discussing with at least (b)(7)c, (b)(6) over several conversations talking about KnowVit. (b)(6) (b)(6), (b)(7)c stated he was uncomfortable with what you can or can't tell private citizens what they can do regarding how KnowVit was forming their company and "where current people working on my contracts are also employees of their own company trying to get other contracts."

(e) B6, B7C testified that "B6, B7C was a colleague...he came to me one day and said he had got this million dollar contract

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from the Army and he wanted to contract it out. And I said, 'We'll go talk to (b)(6), (b)(7)c' ...That's pretty much the last I heard of it." He recalled telling B6, B7C that "as long as it's legal I didn't care if he helped him" [(b)(6), (b)(7)c]. B6, B7C "asked me for lots of people that could do the work around campus, not just her [Ms. Darken]. But I told him, 'Go talk to MOVES people.'" B6, B7C stated "I didn't really know very much about KnowVit except that B6, B7C (b)(6), (b)(7)c said he worked for KnowVit and I think it was B6, B7C and B6, B7C but I'm not sure."

(20) **Agile project proposal.** A proposal to develop a Counter Terrorism/Counter Insurgency Fusion Portal was sent by B6, B7C to B6, B7C. The document was essentially the same as the statement of work (SOW) for the (b)(6), (b)(7)c research project that Agile worked on. Email showed that (b)(6), (b)(7)c staffed the proposal to CHDS personnel ((b)(6), (b)(7)c) and contractors ((b)(6), (b)(7)c) for comment on 24 Nov 2010. Prof. Lewis stated "Please find attached a proposal from Agile Research to 'partner' with CHDS. I am seeking your inputs on this because it is a non-standard request, it may have CHDS-wide implications, and I value your inputs." There was no apparent action by CHDS to move forward on the proposal.

(a) (b)(7)c, (b)(6) at CHDS, but called the (b)(6), (b)(7)c testified that she believed the proposal was sent by B6, B7C to B6, B7C. She stated that after the (b)(6), (b)(7)c project went to Defense Analysis, Agile wrote a proposal and gave it to CHDS leadership saying, "We can build you this counter-terrorism fusion portal website, and it would be this great website and if the Center can put in \$100,000, then Agile would put in \$250,000, and we could partner on this fusion portal website." She believed there was no action by CHDS to move forward on the proposal.

(b) B6, B7C testified that he did not recall an Agile fusion portal proposal to partner with CHDS. He stated that it didn't surprise him that B6, B7C and B6, B7C were trying to drum up business for their company because they're contractors and that's what they do. They have a company doing variations of other work. (b)(6) (b)(6), (b)(7)c did not see the work Agile was doing as problematic because "whatever they want to do and work through the contracts office is up to them."

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(c) When asked what was the purpose of asking for input from CHDS contractors and government staff, B6, B7C testified that "maybe it's my fault, but I try to reward people that are entrepreneurial and take initiative. Doesn't mean I'm gonna do business with them, but I'd like to see them branch out or do something." He recalled receiving the proposal, but he and (b)(6), (b)(7)c didn't want to do it.

(21) **Flash movies for CyberCIEGE.** Email discussion 25-26 Jan 2011 between (b)(6), (b)(7)c and B6, B7C on supporting NPS researcher (b)(6), (b)(7)c request to help develop flash movies. (b)(6), (b)(7)c initially sent the message to B6, B7C with a cc to B6, B7C. B6, B7C forwarded the message to B6, B7C and B6, B7C who both supported helping. B6, B7C stated that she assumed the initial email was an inquiry, and since the work fit into Agile's mission, she responded to (b)(6), (b)(7)c. B6, B7C outlined to B6, B7C two different steps to take for deciding if CHDS or Agile would do the work. B6, B7C replied that it was not clear what CHDS wanted to do and to let (b)(6), (b)(7)c be the point man. There appeared no action was taken to support (b)(6), (b)(7)c.

(22) **Colorado Tech Cyber Security Self Study Course.** There was an email dialogue on 2 Feb 12 between (b)(6), (b)(7)c and (b)(6), (b)(7)c with Colorado Tech University, Agile, and CHDS on a public-private partnership. (b)(6), B6, B7C and B6, B7C discussed project specifics of the work involved, the cost, and Agile's potential involvement along with that of (b)(6), (b)(7)c a MAC contract employee.

(a) In the initial email, B6, B7C provided direction and tasking to B6, B7C to determine the cost of online modules based on (b)(6), (b)(7)c listing, and included a statement that she would probably have to hire someone extra. B6, B7C replied that she had a media developer working for Agile that she could task immediately. There appeared that no action was taken to award work to Agile or MAC.

(b) B6, B7C testified that "the idea was that we didn't want to touch it, B6, B7C and I, so we just said, 'You could go talk to these contractors and see if they're interested.' That's basically it. We just said, 'No. We're not going to touch that with a ten foot pole. Go find somebody else and if you can do something with the contractors, good luck.'"

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(23) **RFI Assessment.** There was a series of emails that openly discussed a plan to solicit the requirement to replace (b)(6), (b)(7)c (a contract employee who conducted course evaluations). The emails were dated 15 Nov 2012 to 9 Jan 2013, subject Assessment RFI, RFI, or Assessment/Evaluation Effort, between (b)(6), (b)(7)c (b)(6), (b)(7)c

(a) The emails coordinated an effort to approve and organize the RFI that MAC Consulting would publish to back-fill (b)(6), (b)(7)c position. The strategy outlined by B6, B7C indicated CHDS leadership would be involved in deciding who MAC Consulting should hire.

(b) B6, B7C mentioned to B6, B7C that if he was a government employee, his actions would be a "violation of procurement regulations...This is why we have B6, B7C to keep us out of trouble...the sponsor, B6, B7C and I would like to keep our options open. BTW, we haven't been briefed on the proposal." B6, B7C actively kept B6, B7C and B6, B7C informed of the MAC Consulting effort to hire a replacement for (b)(6), (b)(7)c

(c) Previous to the RFI discussion, B6, B7C openly discussed in an email dated 15 June 2012 with B6, B7C that he asked (b)(6), (b)(7)c NPS Faculty, about conducting evaluations for CHDS.

(d) B6, B7C testified that he vaguely recalled the email about a replacement for (b)(6), (b)(7)c and potentially going out with a request for information or request to initiate a contracting action for his replacement. He was aware of the matter, but not any details. [Note: It appeared MAC Consulting eventually provided an evaluator that was not linked to this discussion.]

(24) B6, B7C FLCSD, performed a subject matter expert (SME) review of CHDS communication with contractors. He stated that the COR can get reviews and assistance from other government personnel, but it's the COR's role to be communicating with contractors. He believed B6, B7C B6, B7C and B6, B7C had direct access to contractors, and were providing technical advice when they were not authorized to do so.

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Contractor Involvement in Inherently Governmental Functions.

(25) **Faculty Executive Committee (FEC).** The initial FEC proposal was developed by B6, B7C on 19 June 2012 and staffed with B6, B7C B6, B7C and B6, B7C. The proposal included a meeting on 17 July to outline the curriculum and assessment issues that would form an agenda for an August meeting in preparation to meet with the sponsors in September. In a 4 October 2012 email to CHDS, B6, B7C stated the FEC was formed to look into three major issues: 1) evaluation -- post retirement of (b)(6), (b)(7)c 2) curriculum revision, and 3) exploration of becoming a department. On 20 November 2012, B6, B7C asked B6, B7C who had authorized the FEC. (b)(6) Woodbury replied, "I don't know if authorized is the right word but my recollection is that (b)(6), (b)(7)c and (b)(6), (b)(7)c created it and we de facto approved it by acknowledging it and seeking its input to (b)(6), (b)(7)c and assessment."

(a) B6, B7C stated he spoke with B6, B7C and they called a meeting, picked nine of the best faculty members (four were NPS employees and five were contractors). They met to discuss the curriculum review and how to take it to the next step. This was the beginning of the FEC, a term he made up. During an outbrief with (b)(6), (b)(7)c B6, B7C stated that some of the contacted faculty wanted to become NPS faculty. (b)(6), (b)(7)c stated it might be time to investigate CHDS becoming a department, and B6, B7C said he took that as an action item. Several senior NPS faculty liked it, but the ideas were "met so viciously by the (b)(6), (b)(7)c and the (b)(6), (b)(7)c that I was stunned."

(b) B6, B7C stated that about a year ago, he heard B6, B7C was going to retire, and there was no succession plan. The FEC looked at the direction homeland security was going and the direction of the curriculum. Also, since B6, B7C was retiring, whether the evaluation function needed to change. The FEC had representation from CHDS and contractors. B6, B7C stated he volunteered to talk to B6, B7C and B6, B7C about the FEC ideas, and they did not like them. B6, B7C stated he was not the chair of the FEC. Emails showed that B6, B7C personally discussed FEC issues and provided feedback and recommendations to B6, B7C and B6, B7C about the FEC.

(c) B6, B7C NSA faculty and instructor at CHDS, testified that the FEC was the brainchild of B6, B7C and he was the visionary. He asked him to join the FEC. One of the main reasons

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for the FEC was to examine opportunities for new leadership after B6, B7C made an announcement that he was going to retire. When B6, B7C said he was not going to retire, the FEC didn't continue. He stated that the FEC was viewed as a little out of the box, and B6, B7C and B6, B7C were making suggestions that weren't totally acceptable.

(d) (b)(6), (b)(7)c VRC contract employee, testified that "my perception of the FEC was that it was essentially staged as a coup and this was where (b)(6), (b)(7)c presented a proposal to basically turn CHDS in to an academic department thus getting rid of most of the contractors and replacing B6, B7C

(e) B6, B7C stated the FEC was organized by (b)(6) (b)(6), (b)(7)c and B6, B7C to review the curriculum and look at the next ten years. Three things emerged from the meeting. One was there needed to be a closer link to NPS and contractors needed to become NPS employees. Second, there needed to be a way to conduct research. Last, they were concerned about succession planning. B6, B7C believed B6, B7C and B6, B7C were aware of the FEC meeting.

(f) B6, B7C testified the purpose of the FEC was to approximate a faculty council to discuss issues. B6, B7C formed it and he wanted everybody to feel more included in decision making. B6, B7C stated "B6, B7C and I kind of stood back because it was mostly contractors and we didn't think that we should interfere with contractors." B6, B7C did not know the purpose of having contractors on the FEC, but B6, B7C would know. B6, B7C stated the outcome of the FEC was "they wanted to have a bigger say in what happened at NPS. But I sort of just ignored it because I didn't think that was right." B6, B7C was aware two FEC outcomes were a recommendation CHDS become an academic group and that contractors wanted to become government faculty. B6, B7C stated "B6, B7C and I were not particularly encouraging, but basically took a hands off point of view." The decision to become an academic group was "above our pay grade." Email showed B6, B7C was actively engaged with B6, B7C on blocking the recommendation for CHDS to become an academic group.

(26) IT Committee. B6, B7C NSA and CHDS government faculty, testified that he was asked by B6, B7C to be on the IT Committee that included contractors and government personnel. The IT committee was looking at whether to replace the online learning

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management system, and whether CHDS had the right blend of in-resident and distance learning.

(27) CHDS Academic Associate Duties.

(a) B6, B7C testified that his academic associate responsibilities did not extend beyond signing thesis paper work. He had no say on the curriculum, what goes on in the courses, setting teaching plans, or setting requirements for media because it's all been out outsourced to a contractor [B6, B7C]

(b) B6, B7C testified that B6, B7C "was the AA, and so in theory we should have had a lot to do with each other. In practice he just signed paperwork and I did the job."

(28) Identification of Contractors.

(a) B6, B7C government employee for the Dudley Knox Library Homeland Security Digital Library (HSDL), testified that she didn't know who is a contractor or not at CHDS. She did not know for a long time that most of CHDS faculty were contractors.

(b) B6, B7C testified that he assumed B6, B7C MAC contracted employee with the title of (b)(6), (b)(7)c was in a "senior enough position" that she was a government employee. B6, B7C did not know if B6, B7C was a government or contractor employee, but said he "is one of the senior and better known faculty members in a senior position."

(29) Mentoring of (b)(6), (b)(7)c

(b)(7)c, (b)(6) for the Homeland Security Curriculum for the military, testified that she was told by (b)(6) B6, B7C that CHDS needed full-time government employees. She was asked to do some teaching, be the scientific reviewer for the Institutional Review Board (IRB) process, and possibly doing some academic associate work because she oversees the 691 curriculum. She was going to join B6, B7C in teaching a writing research seminar and had been communicating with B6, B7C on the aspects and particulars of team teaching the seminar. She characterized her work with B6, B7C as an apprenticeship. She was fairly sure B6, B7C was a contractor.

(a) In a series of emails dated 10-15 April 2013 between B6, B7C and B6, B7C B6, B7C informed B6, B7C that she would like add (b)(6), (b)(7)c to the CHDS labor plan. B6, B7C

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replied "I'd like you to mentor her [(b)(6), (b)(7)c] as a co-instructor using our apprentice approach."⁴

(b) On 10 April 2013, B6, B7C asked B6, B7C and B6, B7C for advice on hiring Ms. Halladay to "sign theses proposals and IRB reviewer forms...apprentice in Research Methods to bring her up to speed with (b)(7)c, (b)(6) . B6, B7C replied okay, and B6, B7C replied "works for me."

(30) **Contractor Oversight of B6, B7C functions.**

(a) On 3 May 2013, B6, B7C introduced B6, B7C as the new (b)(6), (b)(7)c B6, B7C stated "She will increasingly take point for all paperwork and data associated with IRB, thesis proposals, final thesis/graduation, extensions, and grades. I will continue to supervise and take responsibility for the policies driving those processes. She already has a great relationship with the thesis office, the IRB office, the Academic Council staff, and the Registrar's office." B6, B7C stated that she made the argument that CHDS was big enough that they needed an Ed Tech, and "we were able to expand (b)(6), (b)(7)c position to include those responsibilities...she and I work in tandem. Some things I take responsibility for, some things she does, we work as colleagues; sometimes she kind of calls the shot, sometimes I do."

(b) B6, B7C testified that she helped in the management of academic affairs, crating issues, any Python registrar B6, B7C issues, assists with the IRB process, and assists (b)(6) (b)(6), (b)(7)c She started as a contractor in December 2010 and became a government employee in October 2012. She stated that B6, B7C is a faculty member and her title is (b)(6), (b)(7)c or (b)(6), (b)(7)c B6, B7C "does a lot of operational stuff on the academic side of the processing of theses, used to be the IRB advisor...and set up the thesis center that we have on our website." She stated she was not aware of contractors supervising, tasking, or directing government employees. B6, B7C stated that the treatment of her hasn't changed between a contractor and becoming a government employee.

(31) (b)(6), (b)(7)B6, B7C testified that he has been an instructor since 2003, as well as other odds and ends, "admin stuff,

⁴ CHDS team teaches courses using a mix contractors and government employees. New instructors observe how a course is taught before assuming a primary role in teaching.

thesis work, counseling students..." He believed B6, B7C does the labor plan based on what B6, B7C and B6, B7C direct her to do. In a 7 April 2013 email to B6, B7C and (b)(6), (b)(7)c B6, B7C asked them if he was being an unreasonable malcontent about his ideas for next year's teaching plan. He stated "Over the next several months we need to think thru next year's teaching labor plan, because: 1. I anticipate greater pressure on us to employ NPS faculty, and we may face "departmental ism" from NPS. 2. We are experimenting with new course content and possibly new courses. 3. I am still concerned with how we deliver online (both the lack of online content in many cases and the delivery of content that we have spent a lot on, already). I have some rather dramatic ideas in mind, but I may be too radical. Am I being an unreasonable malcontent? Or can we do better? I need your help in reigning [sic] in my radicalism!"

(a) B6, B7C testified that B6, B7C is always involved in conversations that had to do with how changes would affect the curriculum.

(b) B6, B7C testified B6, B7C is the deputy director of academic programs, and called him "like the supervisor of the contract faculty." B6, B7C periodically reviews the progress of students, recruits to fill empty slots, talks to people when they are upset or have a grievance, and is the interface between contract faculty and government. B6, B7C stated that (b)(6), (b)(7)c is not a decision maker, but he is involved and knowledgeable about decisions. He has a PhD and is qualified to understand the subject matter.

(32) B6, B7C emailed (b)(6), (b)(7)c on 5 August 2012 about official correspondence with the school. In his email, B6, B7C asked B6, B7C and B6, B7C to consider official correspondence come through them. He stated "we likely have contractors doing things that the school would strongly prefer be done by NPS employees. I'd rather not call attention to that, at least not now."

(33) (b)(6), (b)(7)c (b)(7)c, (b)(6), testified CED3 has five functional areas primarily with distance learning and online education that include instructional design, media development, programmatic marketing, logistical support, and administrative support. B6, B7C

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stated he worked for CHDS until 2008 on the learning management system and homeland security digital library. He hired B6, B7C and believed she took his place when he left. B6, B7C B6, B7C that Ms. (b)(6), (b)(7)c did media development and course content development for CHDS.

(34) (b)(6), (b)(7)c testified that she believed B6, B7C and Mr. Livingston would do what B6, B7C asked if they saw it as a way to work positively with the customer.

(35) (b)(6), (b)(7)c (b)(6), (b)(7)c testified that he has been the (b)(6), (b)(7)c for six years. He is the (b)(6), (b)(7)c and was a (b)(6), (b)(7)c for the U.S. Army as a civilian for (b)(6). He is level three certified in contracting and has a (b)(6), (b)(7)c in contracting. He is essentially the (b)(6), (b)(7)c "Day to day operations, keeping people paid, getting contracts awarded, getting money moved...curriculum developments (manage the overall process at the higher level), working with faculty, everything that has to do with the operation of the program." He moved to (b)(6) from (b)(6) because "they needed someone who understood contracts." He stated that (b)(6) B6, B7C doesn't have a role in contracting. He tries to "keep B6, B7C out of trouble as much as possible" because "B6, B7C a professor...He doesn't understand the first thing about being a federal employee [working with contracts]...because he doesn't have a background in any of this stuff." My job is to help manage the large service contracts. B6, B7C stated that B6, B7C talks to him more now about contracting since the IG is conducting an investigation because (b)(6) B6, B7C "doesn't know what personal services contracting is...doesn't B6, B7C what he would have ever done wrong."

(36) (b)(6), (b)(7)c testified he has been at CHDS since (b)(6). His duties are split between (b)(6) (b)(6), (b)(7)c received from the sponsor. He is the (b)(6), (b)(7)c with the sponsor, does recruitment with federal, state and local agencies, and does outreach for the program. B6, B7C stated that B6, B7C maintains oversight of the academic rigor and the tech side. He would communicate frequently with B6, B7C B6, B7C would primarily communicate with B6, B7C on contracting matters, but kept (b)(6) B6, B7C informed.

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(37) (b)(6), (b)(7)c [REDACTED] and NPS faculty, testified:

(a) He stood up CHDS from inception in 2002 and considered himself the "(b)(6), (b)(7)c [REDACTED]" He wrote the (b)(6), (b)(7)c [REDACTED] (b)(6), (b)(7)c [REDACTED] He was the academic associate and then became the (b)(6), (b)(7)c [REDACTED] He teaches several courses in CHDS.

(b) He relies on B6, B7C [REDACTED] expertise in contracting to make sure things are accurate because he knows nothing about contracting. He stated B6, B7C [REDACTED] is the COR and finance guy, "he's supposed to keep me out of trouble so I rely on him to handle the contracting and finances." B6, B7C [REDACTED] does not have any contracting training other than annual online PI training.

(c) He is not a designated (b)(7)c, (b)(6) [REDACTED] but testified that he is the technical POC for some aspects of the contracts because he has a degree in computer science.

b. Analysis/Discussion/Conclusion.

(1) B6, B7C [REDACTED] displayed a pattern of treating contractors as government employees, and established a management climate where he controlled and set the conditions that allowed contract employees to function like government employees. He led CHDS in a manner that allowed him to control, direct, and supervise contractors, place contractors in positions to reorganize activities and duplicate NPS functions, and allow a contractor to provide direction and oversight of a federal employee. B6, B7C [REDACTED] established an employer-employee relationship with contractors allowing them to provide personal services.

(a) B6, B7C [REDACTED] testimony was not credible about hiring contractors. B6, B7C [REDACTED] interviewed and offered employment to potential contracted employees. He orchestrated his own recruiting method and essentially did the work for the contractor in hiring personnel. He developed the concept to utilize contracted interns, interviewed them, and facilitated their hiring. The preponderance of evidence showed that B6, B7C [REDACTED] initiated contact with B6, B7C [REDACTED] offered him a position at CHDS as a contractor, and then notified (b)(6) (b)(7)c, (b)(6) [REDACTED] to start the contractor hiring process.

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(b) Several contract employees testified that they B6, B7C to B6, B7C and took direction from him. B6, B7C administered what amounted to disciplinary/corrective action to B6, B7C His ability to fired B6, B7C and B6, B7C was credible.

(c) At least two NPS employees working with CHDS assumed or did not know if CHDS contractors were government employees.

(d) The preponderance of evidence showed that B6, B7C played a B6, B7C role in assisting B6, B7C with CHDS decisions involving the FEC and in personnel matters with B6, B7C

(e) B6, B7C allowed B6, B7C a contractor, to mentor (b)(6), (b)(7)c a government employee, in an apprentice role. Apprenticeship implies a supervisory role. B6, B7C also provided oversight of B6, B7C (government employee) functions. (b)(6) (b)(7)c, (b)(6) introduced B6, B7C as the new Ed tech to CHDS in an email, and outlined the functions/processes she would be doing. (b)(6) (b)(7)c, (b)(6) stated to CHDS that she would continue to supervise and take responsibility for the policies driving B6, B7C processes.

(f) Contractors in the FEC did not work independent of government supervision, which was also evident for the IT Committee. The results and recommendations of these committees involved reorganization of CHDS and planning for CHDS's future. The recommendations had potential to increase the scope of work and funding for contracts in order to support the recommendations that were formulated by contractors on the committees.

(g) B6, B7C maintained relatively continuous supervision and control over CHDS contract employees (B6, B7C and B6, B7C who owned Agile. This was demonstrated by his control over Agile for approval of adding work on the (b)(6), (b)(7)c project, considering using Agile to further CHDS activities with outside agencies, and directing Agile to provide cost data on CHDS partnership opportunities.

(2) Contracted faculty appeared to replicate NPS functions for the academic associate (AA) and learning management systems. Ms. Wollman testified that she performed the majority of AA duties and this was confirmed by B6, B7C It appeared that CED3 provides similar learning management functions to NPS that CHDS contractors perform.

(3) B6, B7C relied on B6, B7C contracting experience to keep him out of trouble, yet B6, B7C was aware of and

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frequently concurred of B6, B7C actions on contracting matters. B6, B7C testimony was not credible regarding his knowledge of B6, B7C actions. B6, B7C control over contractors was evident in his verbal confrontation with B6, B7C at El Toritos about performance issues. B6, B7C justified his actions as "trying to get the maximum amount of performance for the government's money because I'm a taxpayer too".

(4) B6, B7C maintained a level of control and influence over contract companies that was evident when two of three contract employees received salary increases based on the IT labor plan provided to VRC that he authored. Additionally, contracted employees received a COLA increase after MAC and VRC contract companies were directed by CHDS to analyze the idea of paying COLA, and after (b)(6), (b)(7)c B6, B7C approved the contract companies COLA increase recommendations. It appeared CHDS contractor companies accepted B6, B7C control over contract employees to maintain cooperative relationship and favorable support for potential future funding. This was evident by the level of CHDS involvement of internal company matters (awarding COLA and salary increases) based on CHDS direction and B6, B7C approval.

(5) (b)(6), (b)(7)c believed B6, B7C had direct access to contractors, and was providing technical advice when he was not authorized to do so.

(6) The allegation that B6, B7C improperly administered contracts in CHDS, in violation of Federal Acquisition Regulation (FAR) 7.5 and 37.1 was substantiated. B6, B7C has been at CHDS since its inception and developed and established a structure of control and authority over contractors supported by B6, B7C (b)(6) (b)(6), (b)(7)c B6, B7C and B6, B7C B6, B7C effectively utilized and treated CHDS contractors as government employees by the way he exercised his authority in CHDS and over CHDS contractors. B6, B7C established an employer-employee relationship with contractors allowing them to provide personal services. The acquiescence by B6, B7C CHDS COR and contracting expert, of B6, B7C actions allowed B6, B7C to abuse his position of authority in exerting control over contractors. Based on the evidence, we B6, B7C the allegation.

c. Recommendation.

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(1) Provost confer with the NPS HRO to determine appropriate administrative action to hold B6, B7C accountable for improperly administered contracts in CHDS, in violation of Federal Acquisition Regulation (FAR) 7.5 and 37.1. [Note: B6, B7C retired on 30 September 2013]

(2) CHDS Director ensure the supervisory role over B6, B7C be assigned to a federal employee, and government faculty not be in an apprentice role under contractors.

d. Disposition. None. (b)(6), (b)(7)c B6, B7C retired from federal service on 30 September 2013.

4. Allegation 2. B6, B7C improperly administered contracts in CHDS from September 2009 to May 2013, in violation of Federal Acquisition Regulation (FAR) 7.5 and 37.1.

a. Facts.

(1) Standards.

(a) As stated in allegation 1.

(b) Department of Defense COR Handbook, March 22, 2012

(2) CHDS contracts. As stated in allegation 1.

(a) B6, B7C was listed as the Contracting Officer Representative (COR) for CHDS contracts since 2009.

(b) Contract N00104-12-C-Q525 and N00104-11-M-QV95 states the "COR is responsible for all government technical interface concerning the contractor and furnishing technical instruction to the contractor." These contracts state "the technical assistant (TA), if appointed, is responsible for providing routine administration and monitoring assistance to the COR. The TA does not have the authority to provide any technical direction or clarification to the contract."

Control, Directing, and Tasking of Contractors

(3) **CHDS IT Strategy and Labor Plan.** The IT Strategy outlined changes in direction for CHDS to address a drop in productivity. The IT Strategy was accompanied by an IT Labor Plan authored by (b)(6), (b)(7)c B6, B7C and edited by B6, B7C. The labor plan included recommendations to increase contractor salaries for three contractors. Two of the three contractors received salary increases.

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(a) On 12 July, B6, B7C asked B6, B7C to run the IT labor documents by the contractors. The labor plan that included the recommendations was sent to B6, B7C VRC, by B6, B7C on 25 July. On 26 July, B6, B7C told B6, B7C that (b)(6) is good with whatever you want to do."

(b) B6, B7C testified that the purpose of asking (b)(6), (b)(7)c to share the IT strategy and labor plan with contractors was because there was "a lot of fighting going on in the IT group" and they needed structure. "I proposed to B6, B7C that he communicate that to the contract staff. If people know what their lanes are, maybe they won't get in each other's way and maybe we can stop all this fighting and get back to work. I don't think it worked, but it was an attempt."

(c) B6, B7C FLCSD SME, stated the IT strategy requirements and motivation were reasonable. The development of a labor plan to implement the IT Strategy was a problem. "The government crossed the line in providing decisions regarding the interoperability of the contractor's company when they suggested raises and labor mix to accomplish the IT Strategy."

(d) B6, B7C testified the pay raise recommendation was in the document because the company wanted to know "if we would approve this sort of thing...if B6, B7C would concur with it."

(e) On 18 September, B6, B7C provided an additional explanation on the IT matter. He stated "the prime contractor asked the Government for input effecting cost effectiveness and program efficiencies. Efficient organization and turnover management are concerns for all parties involved to produce cost effective results and stay within authorized budgets." B6, B7C believed the IG sees the evidence as though it "appears designed to demonstrate government direction...it was not...nor were the opinions taken as direction by the contract company."

(4) **Cost of Living Adjustment (COLA).** In November 2012, there was a discussion with CHDS leadership and the contract companies to decide on whether COLA should be paid to contract employees.

(a) B6, B7C VRC, stated in a 16 November email to CHDS (B6, B7C B6, B7C and B6, B7C and cc'd to MAC Consulting, "As directed in the Mid-Year Budget review, we have developed estimated costs for COLAs under varying conditions and %

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levels." On 26 November, B6, B7C and B6, B7C approved the recommendations. COLA was paid to contract employees in March 2013.

(b) B6, B7C stated he believed the contractors were asking for CHDS's opinion on COLA. He didn't recall everything about the COLA discussion, but believed the contractors provided too much detail. "I think at some point it got to the level of detail that it shouldn't have gotten too...somebody should have said, 'Oh, stop.'"

(c) (b)(7)c, (b)(6) stated that "there is a difference between monitoring the contractor's efforts and directly participating in decisions as to whether or not to provide COLA or other pay increases to contractor employees. Participating in a contractor's pay decisions is outside of realm of a government employee's responsibilities...The government overstepped their limitations."

(d) B6, B7C testified that the contractor can pocket extra money or make suggestions, and asked the government about the COLA increase as more of a courtesy. He said that priorities are reviewed at staff meetings, and contractors are not given direction.

(e) On 18 September, B6, B7C provided an additional explanation on COLA. He stated "the prime contractor asked the Government for its opinion effecting cost effectiveness and program efficiencies. The basic issue at hand was that one support contract company would pay employees' COLA's while the others would not. They all work together and even though by policy it shouldn't be a government problem, in the real world it is. Retention and turnover management are concerns for all parties involved so the prime contractor solicited input from all parties to produce cost effective results and to stay within authorized budgets."

Contractor Hiring.

(5) B6, B7C testified that "most of the faculty are found by the faculty. What tends to happen is the contract faculty are the ones who are out there meeting, greeting, being at conferences and saying we need this subject matter expert, or I want them teaching or co-teaching this class with me."

(6) Hiring of B6, B7C MAC contractor.

(a) The preponderance of evidence in allegation one showed B6, B7C initiated contact with B6, B7C offered him a position

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at CHDS as a MAC contractor, told him how much he would be paid, and then notified B6, B7C to start the contract hiring process.

(b) B6, B7C stated that he sent the email information to B6, B7C about hiring B6, B7C because "we have to rationalize the bills when they come in so he has to know what their pay scales are."

(c) (b)(6), (b)(7)c testified that the process for hiring (b)(7)c would not work from a strictly contract-government standpoint, but in the university environment it's a collegial, cordial thing that goes above and beyond the government because faculty are "all working on their professional reputations and they go to different universities." B6, B7C is a senior tenured professor, and what he did was "not untoward from that perspective because he's probably already been made aware from the support contractor that they're hiring this guy. He's probably already reviewed his credentials and resume."

(d) B6, B7C testified that he didn't believe it was problematic that B6, B7C told B6, B7C what he would be paid because the labor categories are set. B6, B7C believed (b)(6), (b)(7)c B6, B7C email to B6, B7C was a professional courtesy more than a hiring action, and B6, B7C "didn't tell B6, B7C 'I just hired you'" but the contractor is gonna to put you in the classroom." (b)(6), (b)(7)c stated B6, B7C "probably shouldn't have sent the email."

Control/Directing/Supervising Contractors.

(7) **Threat to fire** B6, B7C B6, B7C testified that on 10 July 2012 she was told by B6, B7C that "B6, B7C just walked into my office and says he wants me to fire you." She B6, B7C that Mr. Harrigan told her that "he told B6, B7C he can't fire you...and I would talk to you...Just keep your head down."

(a) In a VRC memorandum for record B6, B7C 8 May 2012 subj: Official Complaints from CHDS on MPSC employee, it B6, B7C complaints were received from B6, B7C B6, B7C (b)(6), (b)(7)c that (b)(6), (b)(7)c was "surly in communication with each of them, displayed unprofessional attitude, and has been difficult to work and communicate with."

(b) B6, B7C stated she took her observations and complaints about B6, B7C to B6, B7C. This resulted in a formal complaint made by B6, B7C to B6, B7C regarding the poor performance by B6, B7C.

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(c) B6, B7C testified that B6, B7C told him "you got to tell B6, B7C to keep her head down. B6, B7C just ordered me to fire her."

(d) B6, B7C stated that he did not tell B6, B7C that B6, B7C wanted to fire her. He stated the discussion was more of a professional problem she was having and her contract company wanted to fire her. She was making a lot of trouble for them and badmouthing them specifically. B6, B7C believed that B6, B7C thought she could get away with it because her husband worked at NPS. B6, B7C stated he made it a point, personally, to tell her that she works for a contract company, and "to do what you're told and stop making problems." B6, B7C stated that the contractors came to "us" and wanted to approve replacing her on the contract.⁵

(8) **El Torito Incident.** The complainants detailed an incident between B6, B7C and B6, B7C in February 2011 during lunch at a local restaurant with B6, B7C and B6, B7C. B6, B7C testified the lunch was to brainstorm how Agile could do work for CHDS. The purpose of the lunch B6, B7C the level of oversight of contractors and the CHDS-contractor relationship.

(a) During the lunch, B6, B7C used loud and abusive language directed at B6, B7C. B6, B7C was able to recall the details of the incident and stated that he regretted what was said. B6, B7C and B6, B7C were able to recall the details of the incident as well.

(b) B6, B7C testified that he remembered being at El Toritos and that B6, B7C left crying and then came back. He did not recall what was said to B6, B7C. B6, B7C using profanity, or B6, B7C using abusive language.

(9) (b)(7)c, (b)(6) In 2009, B6, B7C a former research assistant in MOVES, contracted out his research utilizing the CHDS NW02 contract with MAC Consulting. The work was sub-contracted to KnowVit,⁶ a company owned and operated by Ms. B6, B7C (b)(6), (b)(7)c and B6, B7C

(a) B6, B7C testified that (b)(6), (b)(7)c was aware she started a company, and "(b)(7)c, (b)(6) and (b)(7)c, (b)(6) are friends."

⁵ B6, B7C employment was terminated by MPSC on 16 August 2013.

⁶ KnowVit was renamed Agile Research and Technology in the fall of 2010.

(b) Emails from 5 October to 29 December 2009 outlined the coordination between personnel in MOVES, the NPS Research Office, and CHDS (B6, B7C B6, B7C B6, B7C and B6, B7C to sub-contract work using CHDS contract N00178-06-D-4798-NW02. In early October, B6, B7C arranged a meeting with B6, B7C (b)(6), (b)(7)c and B6, B7C to discuss having B6, B7C group [Agile] work for B6, B7C using the MAC Consulting contract.

(c) B6, B7C testified there was a meeting with (b)(6), (b)(7)c B6, B7C B6, B7C B6, B7C and himself where they were told MAC would be the prime, they [Agile] would do the work, and answer to B6, B7C as the PI.

(d) (b)(6), (b)(7)c provided emails that showed (b)(6), (b)(7)c (b)(6), (b)(7)c was closely involved in the decision process to approve Agile working on the (b)(7)c, (b)(6) project.

(e) B6, B7C testified that "B6, B7C was a colleague...he came to me one day and said he had got this million dollar contract from the Army and he wanted to contract it out. And I said, 'We'll go talk to B6, B7C [Harrigan]'...That's pretty much the last I heard of it." He recalled telling B6, B7C that "as long as it's legal I didn't care if he helped him"[Lieberman].

(f) B6, B7C testified that he determined (b)(6), (b)(7)c project research could fit under the NW02 performance work statement for instructional design and special projects. He believed the government would benefit by using a variation of what they were doing instead of building a learning management tool from scratch. MAC Consulting stated they could do the (b)(7)c project work, but MAC Consulting decided what sub-contractor to use. In reference to B6, B7C meetings with B6, B7C B6, B7C B6, B7C and Mr. B6, B7C B6, B7C stated he didn't know why B6, B7C had a meeting with B6, B7C and B6, B7C He stated that "while his personal recollection is that B6, B7C was not trying to direct work to Agile...he doesn't sit in a lot of those meetings."

(10) **Agile project proposal.** B6, B7C staffed a proposal to develop a Counter Terrorism/Counter Insurgency Fusion Portal that was developed by Agile to CHDS personnel that included B6, B7C and contractors. B6, B7C testified that he did not recall an Agile fusion portal proposal to partner with CHDS. He stated that it didn't surprise him that B6, B7C and B6, B7C were trying to drum up business for their company because they're contractors and that's what

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they do. They have a company doing variations of other work. (b)(6), (b)(7)c
(b)(6), (b)(7)c id not see the work Agile was doing as problematic because "whatever they want to do and work through the contracts office is up to them."

(11) **Flash movies for CyberCIEGE.** Email discussion 25-26 Jan 2011 between CHDS and contractors (B6, B7C and B6, B7C about supporting (b)(6), (b)(7)c request to help develop flash movies. (b)(6), (b)(7)c forwarded the message to B6, B7C and B6, B7C who both supported helping.

(a) B6, B7C stated in his email reply "anything is do-able...if we want to do it." B6, B7C and B6, B7C discussed whether the work would be done by Agile or CHDS.

(b) As the email dialog continued B6, B7C stated "It's all about contracts... (b)(6), (b)(7)c just pinged me on a DL contract he is working for the biz school...might be something for Agile." There appeared no action was taken to support (b)(6), (b)(7)c

(c) B6, B7C testified that he did not recall anything about flash movies for CyberCIEGE.

Contractor Involvement in Inherently Governmental Functions.

(12) **Mentoring of (b)(6), (b)(7)c by a contractor.** On 10 April 2013, B6, B7C asked B6, B7C and B6, B7C for advice on hiring (b)(6), (b)(7)c to "sign theses proposals and IRB reviewer forms...apprentice in Research Methods to bring her up to speed with (b)(6), (b)(7)c [(b)(6), (b)(7)c] in anticipation of pressure to use more NPS labor". (b)(6), (b)(7)c characterized her work with B6, B7C as an apprenticeship. B6, B7C replied okay to the action.

(13) B6, B7C **position.** B6, B7C stated that she made the argument that CHDS was big enough that they needed an Ed Tech, and "we were able to expand (b)(6), (b)(7)c position to include those responsibilities...she and I work in tandem. Some things I take responsibility for, some things she does, we work as colleagues; sometimes she kind of calls the shot, sometimes I do." B6, B7C B6, B7C that the treatment of her hasn't changed between being a contractor and becoming a government employee.

(14) **CHDS Academic Associate Duties.** B6, B7C stated that she is the (b)(6), (b)(7)c at academic programs, a (b)(6), (b)(7)c and (b)(6), (b)(7)c for CHDS. She also stated that she did the job

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of academic associate. She regards herself as B6, B7C "right hand man." B6, B7C commented that "the contractor versus government was only ever a distinction in how people get paid."

(a) B6, B7C stated that B6, B7C title is "ethereal...she's more of the deputy curriculum person" working with B6, B7C

(b) B6, B7C testified that he tries "not to deal too much in the nuts and bolts of the academic side of the house," but approving theses "tends to be a collaboration of people." Theses go through the academic associate. B6, B7C has reviewed theses, but wasn't the only one who does the reviews.

(15) (b)(6), (b)(7)c

(a) B6, B7C stated that B6, B7C is a MAC employee and he works with or assists B6, B7C B6, B7C does research for B6, B7C and B6, B7C characterized him as doing strategic thinking at the leadership level in terms of where the program is going.

(b) B6, B7C believed (b)(6), (b)(7)c worked for (b)(6), (b)(7)c and provided legal advice.

(c) B6, B7C knew B6, B7C had a law background, but she didn't work with him very much. She believed B6, B7C was brought on to help with contracts.

(d) B6, B7C characterized B6, B7C as a part-time consulting expert to CHDS.

(e) B6, B7C testified:

(1) She heard from another faculty member that (b)(6), (b)(7)c basically hangs around NPS going from department to department drumming up business." She did not know B6, B7C or his background, but believed "somebody hired him to sit in on the classes."

(2) She B6, B7C B6, B7C was a friend of (b)(6), (b)(7)c and he B6, B7C to throw him some work. "The more official explanation I've heard is that MAC discovered that a key requirement of the contract having to do with evaluation was not being performed, and so hired B6, B7C to do it."

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(3) She had doubts about B6, B7C because "he has no background or expertise in educational assessment or evaluations... He's a lawyer." She stated that B6, B7C "has never been seen taking notes, he hasn't consulted with the instructors on the educational objectives of the courses or how the content was decided. As far as I know there's no plan for him to be observing or evaluating the online portion, which is really where most of the instruction and knowledge transfer takes place."

(f) B6, B7C testified that she believed B6, B7C had some affiliation with what B6, B7C does, so he does something on the finance team, but she wasn't sure.

(g) B6, B7C testified that B6, B7C does part-time program management oversight and assessment for MAC. He believed (b)(6), (b)(7)c observes MAC employees when they teach.

(h) B6, B7C testified that B6, B7C worked for (b)(6), (b)(7)c and on various special projects. B6, B7C would have the most knowledge of what B6, B7C does.

(i) B6, B7C testified that B6, B7C is a full-time program manager for MAC; "he is the point of contact for the MAC contracts; their personnel, their statement of work. He and a guy named (b)(6), (b)(7)c have been splitting duties." "He's supposed to be able to work with (b)(6), (b)(7)c and myself to plan, program, budget and execute the funding that goes in the MAC contract. That's what program managers do."

(j) B6, B7C B6, B7C that he "will definitely vet things [CHDS funding issues] through him" [B6, B7C for supporting the program. B6, B7C stated "he is a lawyer so he is rather adept at peeling back the law to make sure we're on good footing when it comes to certain things."

(16) B6, B7C **support of indirect complaint for CHDS.** (b)(6), (b)(7)c filed a complaint with the NPS IG about the NPS indirect rate and its application to CHDS. B6, B7C B6, B7C input from (b)(6), (b)(7)c before submitting his complaint to the NPS IG. B6, B7C submitted essentially the same complaint to the 2012 Navy IG inspection team and to the NPS President.

(a) B6, B7C stated B6, B7C was the lead on the indirect complaint and would know about B6, B7C involvement. He guessed that B6, B7C was helping CHDS "to go through the various

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legislation on what could be charged on indirect." He did not know if B6, B7C or B6, B7C were working to change legislation or just trying to understand it.

(b) B6, B7C stated that he engaged B6, B7C in reviewing an indirect complaint to the IG last year to get his opinion on it.

(17) **Legislative Changes.** NPS was considering a legislation proposal to the FY15 Unified Legislation and Budget (ULB) initiative as a result of the NAVINSGEN 2012 NPS Inspection. B6, B7C emailed B6, B7C asking "Can you work on a submission for allowing one year funding to cross fiscal years to alleviate NPS's reliance on interim accounts...or for whatever reasons are most compelling."

(a) FAR Subpart 7.5 states, in part, that the "drafting...agency responses to audit reports from the Inspector General" is an example of a function that is considered inherently governmental.

(b) B6, B7C stated the "the Mezzanine wanted my opinion on it, and I asked (b)(6), (b)(7)c to help and take a look at it. When asked if B6, B7C talked to him about legislation matters, (b)(6), (b)(7)c stated that "we don't do legislation, but he's a lawyer so he is rather adept at peeling back the law to make sure we're on good footing when it comes to certain things."

(18) (b)(6), (b)(7)c On 11 October 2012, (b)(6), (b)(7)c a contractor, staffed a draft CHDS Advantage Report to B6, B7C (b)(6), (b)(7)c B6, B7C B6, B7C and (b)(6), (b)(7)c asked for their help for a final review, giving a perception of directing government employees.

(a) He asked B6, B7C to "give it a read from a big picture historical perspective...is there anything that looks questionable or is not true?"

(b) He asked B6, B7C "can you please verify the web user numbers...we started the reporting in August so the number may need updating."

(c) He asked B6, B7C "can your group please verify the cost numbers for the MA and ELP program and the indirect rates?"

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(d) (b)(6), (b)(7)c finished the email with "thanks everyone for all your help in drafting the report and for helping finish it off. Please send me your signoff, comments, edits or questions. We are hoping to finalize the report in the next couple of days."

(e) B6, B7C testified that she "recently worked with him [Mr. O'Keefe] on a report concerning the value that CHDS lends to the Department of Homeland Security. B6, B7C told her to work with (b)(6), (b)(7)c. She gathered online information, organized it, and put it on a spreadsheet that was provided to B6, B7C and (b)(6), (b)(7)c (b)(6), (b)(7)c

(f) B6, B7C testified she believed (b)(6), (b)(7)c does part-time outreach and recruiting work for (b)(6), (b)(7)c used to be the primary person onsite to manage the work of contractors.

(g) B6, B7C B6, B7C (b)(6), (b)(7)c "was the original manager of contractors back in the good old days." He departed in 2005 or 2006 and he called himself the CEO. He wasn't sure if (b)(6) (b)(6), (b)(7)c was still involved in CHDS, but believed he did some special projects and B6, B7C would know. He thought B6, B7C would have oversight of special projects.

(h) B6, B7C testified that (b)(6), (b)(7)c is one of our outreach folks, and he has a history with the center...he was with the center from basically its initiation" and left in 2008. He was referred to as the CEO or COO, but the terminology was inappropriate and no longer used. He primarily works with (b)(6), (b)(7)c and does a lot of their outreach activity. B6, B7C stated that from "time to time I ask him for advice on historical ways we've done things, advice on looking at things going forward, and that type of thing."

(i) B6, B7C testified that (b)(6), (b)(7)c was called the CEO when he first came on board. He managed the contractor workforce. His role now is an advisor to B6, B7C on new business development. (b)(6), (b)(7)c is "always in contact with different people about new opportunities for reimbursable funding." In reference to the 11 October 2012 email on the CHDS Advantage Report, B6, B7C believed (b)(6), (b)(7)c was asking for support under strategic communications and not directing.

(19) B6, B7C stated that B6, B7C was an experienced contracting official.

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(20) B6, B7C stated that from an academic performance standpoint "there's no distinction made between contractors and faculty - and government faculty."

(21) B6, B7C testified that she's been instructed and encouraged to talk with B6, B7C prime contractor POC, by (b)(6), (b)(7)c and B6, B7C B6, B7C would sometimes ask her for her opinion or "sometimes I'll call and ask his opinion on various things." She stated that "sometimes I talk directly to (b)(6), (b)(7)c from VRC, but I usually go through B6, B7C and keep him in the loop because he is the COTR for our group."

(22) (b)(6), (b)(7)c Director, NPS Contracting and Logistics Office, stated that she did not recall B6, B7C talking to her about personal services in the CHDS contracts.

(23) B6, B7C B6, B7C that he would primarily communicate with B6, B7C on contracting matters, but keep (b)(6), (b)(7)c B6, B7C informed.

(24) B6, B7C testified that he relies on B6, B7C expertise in contracting to make sure things are accurate because he knows nothing about contracting. He stated (b)(7)c, (b)(6) is the (b)(6) nd finance guy, "he's supposed to keep me out of trouble so I rely on him to handle the contracting and finances."

(25) B6, B7C testified that he has been the CHDS (b)(7)c, (b)(6) He is the (b)(6), (b)(7)c and was (b)(6), (b)(7)c for the U.S. Army as a civilian for (b)(6) (b)(7)c He is level three certified in contracting and has a (b)(6), (b)(7)c (b)(7)c, in contracting. He is essentially the (b)(6), (b)(7)c (b)(6) officer; "Day to day operations, keeping people paid, getting contracts awarded, getting money moved...curriculum developments (manage the overall process at the higher level), working with faculty, everything that has to do with the operation of the program." He moved to (b)(6) from (b)(6) because "they needed someone who understood contracts." He stated that no one at NPS understands the first thing about being a federal employee [because they are professors]. He stated NPS "is a zoo from a federal standpoint" because NPS does not provide training in managing contracts. His job is to help manage the large service contracts. B6, B7C stated NPS is directing the two administered personal services contract, has talked to (b)(6), (b)(7)c about it, but has not talked to the contracting officer in FLCSD. B6, B7C stated "I never know who my

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contracting officer is because they [FLCSD] keep reassigning people...So no, I have no real good contacts at FISC [sic] San Diego. It's another zoo. It changes constantly."

b. Analysis/Discussion/Conclusion.

(1) B6, B7C is the assigned (b)(6) for CHDS, which includes responsibilities and duties for contract administration. CHDS employees recognized B6, B7C as a contracting expert because of his extensive contracting experience, education, and training.

(2) B6, B7C was in a position of trust and responsibility as the appointed (b)(6) for providing guidance and direction to the CHDS leadership on contracting matters. B6, B7C relied on (b)(6), (b)(7)c extensive contracting expertise to ensure CHDS maintained the right relationship with contractors. The preponderance of evidence showed B6, B7C permitted and supported the CHDS management environment and decisions that led to contractors forming an employee-employer relationship to provide personal services and perform inherently governmental functions.

(3) The preponderance of evidence showed that B6, B7C testimony was not credible regarding his involvement with contractor activities within CHDS. As the (b)(6) and a contracting expert, (b)(6), (b)(7)c was reasonably aware that B6, B7C actions to direct work to a sub-contractor were improper. The evidence showed that:

(a) B6, B7C was personally involved with B6, B7C in the process of directing MAC Consulting to hire Agile to conduct research for B6, B7C. The preponderance of evidence showed B6, B7C decided Agile would do the work and B6, B7C made it happen. As a (b)(6) and contracting expert, B6, B7C would have known his and B6, B7C actions were improper involving Agile.

(b) Allegation one showed that B6, B7C maintained relatively continuous supervision and control over Agile employees (B6, B7C and B6, B7C. B6, B7C was reasonably aware of B6, B7C directing additional potential work to Agile employees. B6, B7C was present when B6, B7C had a verbal confrontation with B6, B7C at El Toritos about performance issues. Performance issues that should have been reported by B6, B7C to the contractor or contracting officer were not. Instead, B6, B7C developed an IT strategy and labor plan to correct contractor performance and this approach was supported by B6, B7C.

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(c) B6, B7C permitted and supported B6, B7C actions in directing contractor companies to provide COLA increases to employees, recommending salary increases to support the IT labor plan, and in hiring contract faculty. B6, B7C allowed CHDS to overstep its limitations with contractors, and was in a position to prevent the employer-employee relationship that allowed B6, B7C to direct contractor actions. We did not find credible B6, B7C explanations that the contractor was providing opinions on COLA and salary increases to CHDS given other evidence that showed contractors took action based on CHDS's direction.

(4) The preponderance of evidence showed B6, B7C treated B6, B7C like a government employee (personal services) and had him perform an inherently governmental function.

(a) Testimony showed that B6, B7C and B6, B7C were friends, and there was a perception by government employees and contractors that B6, B7C worked for B6, B7C

(b) The preponderance of evidence showed B6, B7C personally B6, B7C B6, B7C to work on a submission for him for providing input for a response to 2012 NPS inspection report for a proposed legislation change. B6, B7C also asked B6, B7C to review matters involving the NPS indirect rate applied to CHDS which is charged to sponsors. B6, B7C characterized his interaction with B6, B7C as asking for his opinion and not directing any work. We did not find "asking for an opinion" acceptable because of the level of discussion B6, B7C had with B6, B7C Contractors do not work for free. FAR Subpart 7.5 states, in part, that the "drafting...agency responses to audit reports from the Inspector General" is an example of a function that is considered inherently governmental.

(5) B6, B7C actions indirectly allowed (b)(6) a contractor, to direct B6, B7C (government employee) actions. (b)(6), (b)(7)c previous position as the CHDS CEO appeared to allow him to influence government employees to support him. The appearance of (b)(6), (b)(7)c directing government employees in helping finalize the CHDS Advantage Report was reinforced when B6, B7C B6, B7C (b)(6), (b)(7)c (b)(6), (b)(7)c There is a difference between a contractor requesting information to support his work, and asking government employees to have their subordinates perform work in support of the contractor.

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(6) The allegation that B6, B7C [redacted] improperly administered contracts in CHDS, in violation of Federal Acquisition Regulation (FAR) 7.5 and 37.1 was B6, B7C [redacted] B6, B7C [redacted] was in a position of trust and responsibility as the appointed COR for providing guidance and direction to the CHDS leadership on contracting matters. CHDS relied on B6, B7C [redacted] extensive contracting expertise to maintain the right relationship with contractors. In addition to B6, B7C [redacted] (b)(6), (b)(7)c [redacted] actions involving B6, B7C [redacted] and (b)(6), (b)(7)c [redacted] he B6, B7C [redacted] and B6, B7C [redacted] CHDS's management actions on contracting matters that allowed contractors to form a unique employer-employee relationship to provide personal services and perform inherently governmental functions in CHDS. Based on the evidence, we B6, B7C [redacted] the allegation.

c. Recommendation.

(1) Provost confer with the NPS HRO to determine appropriate administrative action to hold B6, B7C [redacted] accountable for improperly administered contracts in CHDS, in violation of Federal Acquisition Regulation (FAR) 7.5 and 37.1.

(2) Refer the investigation report to the Fleet Logistics Center San Diego (FLCSD) Director of Contracting for information, any appropriate corrective contracting actions, or a follow-on investigation of contract matters.

d. Disposition. B6, B7C [redacted] was removed as the COR on 10 February 2014 by FLCSD contracting Officer, and issued an advisory letter from his supervisor on 28 August 2014.

5. Allegation 3. (b)(6), (b)(7)c [redacted] improperly administered contracts in CHDS from February 2011 to May 2013, in violation of Federal Acquisition Regulation (FAR) 37.1.

a. Facts.

(1) Standards as stated in allegation one.

(2) CHDS contract non-personal service statements read "Contractor employees performing services under this order will be controlled, directed, and supervised at all times by management personnel of the contractor...Contractor employees will perform their duties independent of, and without the supervision of, any Government official...The tasks, duties, and responsibilities set forth in the task order may not be interpreted or implemented in any manner that

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results in any contractor employee creating or modifying Federal policy, obligating the appropriated funds of the United States Government, overseeing the work of Federal employees, providing direct personal services to any Federal employee, or otherwise violating the prohibitions set forth in Parts 7.5 and 37.1 of the Federal Acquisition Regulation (FAR)."

Controlling, Directing, Tasking and Supervising Contractors

(3) **CHDS IT Strategy and Labor Plan.** In July 2012, B6, B7C edited and filled in the names for salary increases outlined in the recommendations. Email documentation showed B6, B7C spoke to (b)(6), (b)(6), (b)(7)c about a meeting of the contract staff to determine how they were going to meet the terms of the strategy.

(4) **Controlling Contractor Hiring.** In May 2012, B6, B7C actively participated in the interviews of summer interns along with B6, B7C B6, B7C (contractor), and B6, B7C (contractor).

(a) B6, B7C VRC contract employee, testified that B6, B7C B6, B7C B6, B7C and B6, B7C B6, B7C his interview.

(b) B6, B7C MPSC contract employee, testified that he interviewed the interns with B6, B7C and B6, B7C

(c) B6, B7C stated that he had no knowledge of (b)(6), (b)(6), (b)(7)c doing interviews, and she should not have been doing the interviews.

(d) B6, B7C testified that B6, B7C "proposed to the contractors that we hire these summer interns... B6, B7C and I did get involved with (b)(6), (b)(7)c ..And the three of us did interview the candidates.. (b)(6), (b)(7)c [VRC] was completely aware of all this, was totally on board with the project."

(5) (b)(6), (b)(7)c testified that she reports to (b)(6), (b)(6), (b)(7)c a government employee. In an email on 18 May 2012, subject: NYPD, B6, B7C tasked B6, B7C to provide a cost estimates for the NYPD interest in funding CHDS to develop a leadership curriculum.

(6) (b)(6), (b)(7)c former CHDS contractor, stated that after B6, B7C became a government employee, he felt there was no dividing line between contractors and government employees on the web team.

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(7) B6, B7C testified that he does get tasks from (b)(6), (b)(7)c but "she basically is the one who says what needs to be done, and then I get contacted and assigned a task." He gets contacted occasionally by (b)(6), (b)(7)c but B6, B7C will task him as a time-saver. B6, B7C B6, B7C he was interviewed by B6, B7C (b)(6), (b)(7)c but he thought B6, B7C was still a contractor when she B6, B7C the interview.

(8) (b)(6), (b)(7)c testified that B6, B7C was a government employee when she helped interview B6, B7C

(9) B6, B7C testified that:

(a) She was probably a government employee when she interviewed B6, B7C as her replacement, and she mentored him "a bit when we were in the contractor transition phase" because "he struggled when he first became a supervisor."

(b) She communicated the technical priorities for the center to the contractor team leads, B6, B7C and B6, B7C. The contractors, B6, B7C and B6, B7C asked her to communicate with the team leads because the contractor is in Virginia and they didn't have technical knowhow about the priorities. (b)(6), (b)(7)c do not have IT experience, and don't know their teams at NPS. B6, B7C would call her to discuss employee decisions.

(c) She has regular daily communication with contractors because "if something breaks and I hear about it, I have to send it to them...If a faculty member comes into my office and says, 'I want this product,' then these are the people I have to send it to because these are the people who do the work. So, I do have regular contact with these folks, and I am quite familiar with all of them just because of the nature of the way the contracts were set up in our Center."

(d) She "routinely passed things through to them...because [in] the technical environment, people come to me and they say, 'Can we build this thing?' And I decide whether it's something that we as a center want to build and then I pass it off to the contract team."

(e) She's been instructed and encouraged to talk with (b)(6), (b)(7)c by B6, B7C and B6, B7C B6, B7C would sometimes ask her for her opinion or "sometimes I'll call and ask his opinion on various things." She stated that "sometimes I talk directly to (b)(6), (b)(7)c

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(b)(6), (b)(7)c from VRC, but I usually go through B6, B7C and keep him in the loop because he is the (b)(6) for our group."

(10) (b)(6), (b)(7)c testified that after B6, B7C converted to government, she maintained daily control over tasking and personnel for the entire tech team and still does today.

(11) B6, B7C of FLCSD believed B6, B7C had direct access to contractors, and was providing technical advice when she was not authorized to do so.

(12) B6, B7C testified that she was a MPSC contractor from March (b)(6) to February (b)(6) as a project manager overseeing the (b)(6) projects, web-based IT projects, and supervision of the web and application development group. She was hired as a government employee on 14 February 2011 as an (b)(7)c, (b)(6) but within CHDS she was called the (b)(7)c, (b)(6). She is responsible for all the (b)(6), (b)(7)c, sets the (b)(6), (b)(7)c and makes sure CHDS is receiving technical products requested under the contract. She has not had (b)(7)c, (b)(6) or (b)(6), (b)(7)c

b. Analysis/Discussion/Conclusion.

(1) The preponderance of evidence showed that after B6, B7C converted from a contract employee to a government employee, she continued to control, direct, and task contract employees. Contract employees did not perform their duties independent of her oversight, and she effectively continued to function as a contractor management representative including mentoring her contract replacement and interviewing contract employees.

(2) We concluded that B6, B7C did not allow B6, B7C to perform inherently governmental functions. There was insufficient evidence to determine if B6, B7C performed an inherently governmental function when B6, B7C tasked her to provide a cost estimate for a NYPD leadership curriculum. We could not determine what was provided, if anything. A contractor providing cost estimates for work to be performed on their contract is not executing an inherently governmental function. On the other hand, if B6, B7C was tasked to prepare content for a government proposal, this would be inherently governmental.

(3) B6, B7C was not a designated (b)(6), (b)(7)c that would have allowed her to administer contracts in CHDS. Even if

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she were, her actions with contractors were improper. B6, B7C was instructed and encouraged to communicate with the prime contractor by B6, B7C and B6, B7C. The preponderance of evidence showed B6, B7C had direct access to contractors, was managing contractors day-to-day, and was providing technical advice when she was not authorized to do so.

(4) The allegation that B6, B7C improperly administered contracts in CHDS, in violation of Federal Acquisition Regulation (FAR) 37.1, was B6, B7C B6, B7C testimony was credible. She readily acknowledged her involvement with interviewing contractors, and outlined her interface with contract employees. After converting to government employment, B6, B7C continued to direct and task contractor employees, and regularly communicated with contract management on technical matters and employee decisions. Her actions allowed contractors to perform personal services in the way she administered and managed oversight of contractors. B6, B7C was not a designated (b)(6), (b)(7)c that would have allowed her to administer contracts in CHDS. B6, B7C did not allow contractors to perform inherently governmental functions, but her actions allowed contractors to perform personal services. We determined there were three mitigating factors to this allegation. One was B6, B7C lack of contracting training, the second was direction provided by (b)(6), (b)(7)c and B6, B7C to communicate with the contractor, and the third was the CHDS contractor-government management climate (employer-employee relationship) that was allowed to occur by CHDS management. Based on the evidence, we substantiated the allegation.

c. Recommendation.

(1) Provost confer with the NPS HRO to determine appropriate administrative action to hold B6, B7C accountable for improperly administering contracts in CHDS, in violation of Federal Acquisition Regulation (FAR) and 37.1 (personal services).

(2) Refer the investigation report to the Fleet Logistics Center San Diego (FLCSD) Director of Contracting for:

(a) Information, any appropriate corrective contracting actions, or a follow-on investigation of contract matters. [Same as recommendation 4c(2)]

(b) FLCSD Contracting Officer for CHDS contracts advise (b)(6), (b)(7)c that there are no contract administration responsibilities

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placed on her as a federal employee, and therefore, she has no duty that involves official communication with a contractor or contractor employee unless officially designated as a COR or technical point of contact (TPOC).

d. Disposition. [B6, B7C] was provided verbal counseling on 28 August 2014.

6. Allegation 4. [B6, B7C] improperly administered contracts in CHDS from September 2009 to May 2013, in violation of Federal Acquisition Regulation (FAR) 37.1.

a. Facts.

(1) Standards as stated in allegation three.

(2) CHDS contracts as [B6, B7C] in allegations one to three. According to testimony, [B6, B7C] considered himself a [B6, B7C]. The approval of expenditures for CHDS contracts was shared among [B6, B7C] and [B6, B7C].

Controlling, Directing, and Tasking of Contractors

(3) **Cost of Living Adjustment (COLA).** In November 2012, there was a discussion with CHDS leadership and the contract companies to decide on whether COLA should be paid to contract employees.

(a) [B6, B7C] VRC, stated in a 16 November email to CHDS [B6, B7C] and [B6, B7C] and cc'd to MAC Consulting, "As directed in the Mid-Year Budget review, we have developed estimated costs for COLAs under varying conditions and % levels." On 26 November, [B6, B7C] and [B6, B7C] approved the recommendations. COLA was paid to contract employees in March 2013.

(b) [B6, B7C] stated he believed the contractors were asking for CHDS's opinion on COLA. He didn't recall everything about the COLA discussion, but believed the contractors provided too much detail. "I think at some point it got to the level of detail that it shouldn't have gotten too...somebody should have said, 'Oh, stop.'"

(c) [B6, B7C] FLCSD, stated that "there is a difference between monitoring the contractor's efforts and directly participating in decisions as to whether or not to provide COLA or other pay increases to contractor employees. Participating in a contractor's

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pay decisions is outside of realm of a government employee's responsibilities...The government overstepped their limitations."

(4) **Hiring of contractors.** B6, B7C testified that when a potential instructor is identified, we may talk to that person, but we don't hire the person unless hired as a government employee. The instructor's information would be passed to B6, B7C and then handed off to MAC for hiring.

(a) B6, B7C stated that he was not familiar with the process that brought B6, B7C on board, but he imagined B6, B7C "may have identified him and passed him off to MAC." He was aware that interns were hired, but not aware of the chain of events to hire them.

(b) B6, B7C stated that B6, B7C (contractor) told him "B6, B7C and B6, B7C now communicate with contracting companies through him [B6, B7C] rather than directly." As an example, he said, "this was how they had been instructed to undertake the most recent instructor hire; B6, B7C tells B6, B7C who he wants then B6, B7C tells the contractor who the leadership wants to hire and the contractor does the hiring."

(c) B6, B7C CHDS government employee and former VRC contract employee, testified that she was interviewed by B6, B7C and B6, B7C before she was hired by VRC.

(d) B6, B7C believed that he "talked to people before they were hired," but didn't think interview is the right word.

(5) **Threat to fire** B6, B7C B6, B7C

(a) In an email dated 16 November 2012, subj: Are you in town, between B6, B7C and B6, B7C about B6, B7C wanting to meet with B6, B7C B6, B7C stated "My guess is that he is reevaluating his loyalties...Maybe he is starting to worry about his job."

(b) B6, B7C testified he believed B6, B7C wanted to fire him based on his involvement with the Faculty Executive Committee (FEC) and his relationship with the Darkens.

(c) B6, B7C testified that B6, B7C B6, B7C him and B6, B7C "to kiss and make up with B6, B7C He believed that it was related to the FEC and being friends with B6, B7C He

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stated that B6, B7C told them "being friends with the (b)(6), (b)(7)c is a problem." B6, B7C stated that B6, B7C made a statement that he "values loyalty and hard work." B6, B7C appeared to imply that B6, B7C association with the (b)(7)c, (b)(6) led to questions of loyalty to CHDS.

(d) B6, B7C testified that he was aware B6, B7C actions of wanting to fire B6, B7C and having B6, B7C apologize for being an "asshole and a bully" related to FEC matters. B6, B7C provided advice and acted as a confidant to B6, B7C when he administered what amounted to disciplinary/corrective action to B6, B7C

(6) (b)(7)c, (b)(6) **Project.** B6, B7C testified that he recalled discussing KnowVit with at least Mr. B6, B7C B6, B7C and B6, B7C over several conversations. B6, B7C stated he was uncomfortable with what you can or can't tell private citizens what they can do regarding how KnowVit was forming their company and "where current people working on my contracts are also employees of their own company trying to get other contracts."

(7) **Flash movies for CyberCIEGE.** Email discussion 25-26 Jan 2011 between B6, B7C B6, B7C B6, B7C B6, B7C and B6, B7C on supporting (b)(6), (b)(7)c request to help develop flash movies. (b)(6), (b)(7)c initially sent the message to B6, B7C with a cc to B6, B7C B6, B7C stated that she assume the initial email was an inquiry. The work fit into Agile's mission and she responded to (b)(6), (b)(7)c

(a) B6, B7C outlined to B6, B7C two different steps to take for deciding if CHDS or Agile would do the work. B6, B7C replied that it was not clear what CHDS B6, B7C to do and to let (b)(6), (b)(7)c be the point man. There appeared no action was taken to support (b)(6), (b)(7)c

(b) B6, B7C B6, B7C that he was uncomfortable after reviewing emails B6, B7C to Agile's involvement with CHDS on discussing work with flash movies for CyberCIEGE because he wasn't sure how he should interface with contractors.

(8) **Mentoring of** (b)(6), (b)(7)c **by a contractor.** On 10 April 2013, B6, B7C asked B6, B7C and B6, B7C for advice on hiring (b)(6), (b)(7)c o "sign theses proposals and IRB reviewer form...apprentice in Research Methods to bring her up to speed with

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(b)(6), (b)(7)c

in anticipation of pressure to use more NPS labor".
B6, B7C replied "works for me." (b)(6), (b)(7)c characterized her work with B6, B7C as an apprenticeship.

(9) B6, B7C testified that he reports to B6, B7C and B6, B7C at CHDS, and everything needed to be cleared through B6, B7C or B6, B7C and not through the contract company. He stated that "B6, B7C and B6, B7C have absolute control over you because of the personal services nature of the CHDS contracts that was facilitated because of relationship with contractors over many years."

(10) B6, B7C CHDS contracted faculty, testified that for teaching duties he reports to B6, B7C and (b)(6), (b)(7)c B6, B7C stated direction to conduct a liaison visit with the Swedish National Defence College in August 2012 came from B6, B7C and not his contracting company.

(11) B6, B7C former CHDS University and Agency Partnership Initiative (UAPI) (b)(6), (b)(7)c until 2012 as a MAC contract employee, testified "taskings and direction essentially came from... B6, B7C and from B6, B7C Woodbury." He interacted with them directly. He was tasked to develop and run the UAPI program, and before he made any decisions or did events, he would coordinate with them [B6, B7C and B6, B7C first to get their approval.

(12) B6, B7C testified that when she was a contractor, she made B6, B7C and her contracting company aware of her observation of Agile doing business at CHDS.

(13) B6, B7C testified that he has been the (b)(6) (b)(6) He is the CHDS COR, and was a (b)(6) for the U.S. Army as a civilian for (b)(6) He is level three certified in contracting and has a (b)(6) in contracting. He stated that B6, B7C doesn't have a role in contracting. B6, B7C is a "pretty sharp guy", used to work for the (b)(6), (b)(7)c "kind of gets the rules and regulations and policies that public organizations have, but he doesn't understand the federal government." B6, B7C would ask him first "when it comes to any contracting kind of stuff...I tell him we can do this or we can't do that."

(14) (b)(7)c, (b)(6) testified that he is the (b)(7)c, (b)(6) and has been at CHDS since 2007. His duties are split

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between teaching, curriculum development, operation management of the center, and co-PI over funds received from the sponsor. He is the main interface with the sponsor, does recruitment with federal, state and local agencies, and does outreach for the program. He supervises B6, B7C and B6, B7C. He would communicate frequently with B6, B7C and keep him informed. B6, B7C would primarily communicate with B6, B7C on contracting matters, and had a "heavy reliance on him" because he's the COR. "I look to him to tell us, 'You can't do that' or 'That's okay, but this is the way we have to approach it.'" B6, B7C stated he didn't know if he was eligible for the DAU contracting course.

b. Analysis/Discussion/Conclusion.

(1) B6, B7C was in a position of authority in CHDS. During testimony, B6, B7C acknowledged that the employer-employee (CHDS-contractor relationship) COLA communications went too far and somebody should have said stop. B6, B7C actively supported the environment created and controlled by B6, B7C that treated contractors like government employees creating a personal services contract.

(b)(6), (b)(7)c) Documentary and testimonial evidence showed that (b)(6) was fully aware, knowledgeable, participated, and weighed in on directing work or discussion of potential work for B6, B7C and B6, B7C company, Agile. B6, B7C was frequently directly involved with B6, B7C on CHDS contracting matters with Agile or aware of what was taking place.

(3) B6, B7C was active in discussions about disciplining B6, B7C with B6, B7C and how they were going to coordinate their responses to him. B6, B7C effectively treated B6, B7C and (b)(6), (b)(7)c as government employees when he provided direction and oversight on how to maintain their relationship with B6, B7C. Several contract employees testified that they reported and took direction from B6, B7C as well as B6, B7C. B6, B7C was knowledgeable and supported B6, B7C actions in hiring contractors, and was reasonably aware of and supported that (b)(6), (b)(7)c (contractor) would be supervising (b)(6), (b)(7)c (government employee) as an apprentice. While there was insufficient evidence that showed B6, B7C allowed B6, B7C or other contractors to perform inherently governmental functions, his actions allowed contractors to perform personal services. B6, B7C was a passive observer to B6, B7C and B6, B7C actions even though his

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title was (b)(7)c, (b)(6) . B6, B7C was not a designated (b)(6) or (b)(7)c that would have allowed him to administer contracts in CHDS. Even if he were, his actions with contractors were improper.

(4) The allegation that B6, B7C improperly administered contracts in CHDS, in violation of Federal Acquisition Regulation (FAR) 37.1, was substantiated. As the (b)(6), (b)(7)c B6, B7C permitted and supported the CHDS management environment that allowed the employee-employer relationship over contractors to flourish. He maintained a similar level of control and authority over contractors that B6, B7C maintained. He was knowledgeable of most of (b)(6), (b)(7)c B6, B7C actions involving contractors. B6, B7C was fully aware, knowledgeable, B6, B7C and weighed-in on directing work or the discussion of potential work for Agile, a CHDS sub-contractor. (b)(6), (b)(7)c (b)(6), (b)(7)c did not allow contractors to perform inherently governmental functions, but his actions allowed contractors to perform personal services. B6, B7C was not a B6, B7C COR or TPOC that would have allowed him to administer contracts in CHDS. Mitigating factors included B6, B7C lack of contracting training and his reliance on B6, B7C contracting expertise. B6, B7C acknowledged that communications with contractors went too far, but he did not act to correct this. Based on the evidence, we substantiated the allegation.

c. Recommendation.

(1) Provost confer with the NPS HRO to determine appropriate administrative action to hold B6, B7C accountable for allowing the improperly administering of contracts in CHDS, in violation of Federal Acquisition Regulation (FAR) 37.1 (personal services).

(2) Refer the investigation report to the Fleet Logistics Center San Diego (FLCSD) Director of Contracting for:

(a) Information, any appropriate corrective contracting actions, or a follow-on investigation of contract matters. [Same as recommendation 4c(2) and 5c(2)(b)]

(b) Advising B6, B7C that there are no contract administration responsibilities placed on him as a federal employee, and therefore, he has no duty that involves official communication with a contractor or contractor employee unless officially designated as a COR or technical point of contact (TPOC). [Same as 5c(2)(c)]

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d. Disposition. B6, B7C was issued an advisory letter from his supervisor on 28 August 2014.

7. Other Matters for Management Action.

a. Issue: CHDS Special Projects.

(1) Discussion: There was an indication that B6, B7C was determining whether or not to support work added as special projects without contracting officer approval and outside the contract statement of work. It appeared he solely determined whether the contract statement of work would support the special project, he was in a position to apply incremental funding for each project, and in a position to approve contractor invoices for these projects. A sample of special project work for the NSA Center for Contemporary Conflict (CCC) appeared to be outside the scope of the CHDS statement of work. Some special projects were for Chinese translation services (CCC-1307 Twomey and CCC-14 US China), editorial support of research proposals for NSA faculty (CCC-1301 Russell), provide research, analysis, and editorial services (CCC-1303 Malley, CCC-1304 Jaskoski). CCC-1303 statement of work specifically states "in support of project yet to be named." CCC-1305 Russell Military Innovator stated that the "contractor will provide specialized research, analysis, expert opinion and professional writing and editorial services." CCC-1306 appears to provide editorial services for a manuscript. CCC-13 NAVAF appeared to support the research, analysis, development and delivery of classroom instruction on-site in Naples, Italy. CHDS also provided support to MOVES to provide lecture materials for a certificate program on medical modeling (MOVES FY13 SOW-130819r1), and development of a medical distance learning course (MOVES FY SOW-121108).

(2) Analysis: As the (b)(6), (b)(7)c appeared to be the sole individual to determine if CHDS would support a special project request. He also approved the contractor invoices for these projects. We could not determine if the contracting officer reviewed or approved these projects, but B6, B7C indicated that he did not engage the contracting officer to add the work. B6, B7C was in a unique position to request the work from the contractor and approve the contractor invoice for the service, or he had oversight of this approval process. The CHDS leadership's reliance on B6, B7C expertise to ensure contracting functions operated correctly allowed him to support many special projects that appeared to be outside the prime contract scope of work. Current contracting procedures by FLCSD

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may have allowed B6, B7C to approve special projects and coordinate the effort with the contractor.

(3) Recommendation: Refer to FLCSD Contracting Directorate (code 200) to consider conducting a comprehensive audit of CHDS special projects in CHDS from 2010-2013 to determine the legitimacy of the work, and whether appropriate contracting approvals/procedures were followed.

(4) Disposition: TBD

b. Issue: Purchase of Laptop Computers for MA Students

(1) Discussion: CHDS Students are given laptop computers, and have the option to purchase the computers at the end of their studies. A witness stated that CHDS students have the option to purchase the computer from the contractor for \$200. CHDS contract N00104-11-M-QV91, QV94, and Q570 paragraph 3.2.12(d), states the contractor (VRC) shall provide assistance to "plan for and provide automation support for all Master of Arts (MA) students while enrolled in graduate studies, to include providing a laptop computer and I-Pod portable MP3 player for the student's use for the duration of the program." The CHDS follow-on contract N00104-12-C-Q525 paragraph 3.2.2 states "The objectives of the web-enabled learning education programs are...end user supply and support for technical hardware, software and web services." B6, B7C (b)(6), (b)(7)c stated that computers are supplied to students, but CHDS doesn't pay a direct cost for them. He stated the cost is built into their labor rates (overhead function) of the contract company.

(2) Analysis: Property purchased by the contractor for the government is government property. It's not clear that the laptops are government property if NPS did not pay the cost as a direct contract cost. If the contractor included the cost of laptops (destined for sale to CHDS students) in its labor rate, it appears the burdened rate is inflated. It appears B6, B7C may have provided inappropriate guidance to the contractor for disposing of government property.

(3) Recommendation: Refer to FLCSD Contracting Directorate (code 200) to consider conducting a review of the contractor and COR process for providing and disposing of laptops purchased for CHDS students.


(4) Disposition: TBD

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8. Interviews and Documents.

a. Interviews conducted.


(b)(6), (b)(7)c



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b. Documents Reviewed.

- (1) Federal Acquisition Regulation (FAR).
- (2) Standards of Conduct 5 CFR 2635.
- (3) Material provide by complainants.
- (4) Contracts and contract related information for N00178-06-D-4798-NW01 to NW03, N00244-07-D-0021, N00244-06-C-0060, N00104-10-MQV91, N00104-11-M-QV94, N001-4-11-Q-QV95, N00104-11-M-Q570, and N00104-12-C-Q525.
- (5) Email and documentation provided by subjects, witnesses, contractors, and subject matter experts.
- (6) Company information for KnowVit, Agile Research and Technology, MAC Consulting, Military Personnel Services Corporation (MPSC), VRC, Inc., and RHP Enterprises, LLC.
- (7) CHDS related documentation (Stafford Act, DHS Memorandums of Agreement, comptroller funding documents for CHDS, CHDS fact sheet).
- (8)  research proposal and funding documents.

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END OF REPORT

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